United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 76-4278

United States Court of Appeals

FOR THE SECOND CIRCUIT

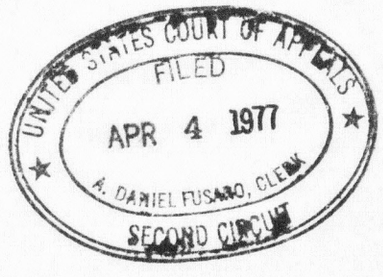
REA EXPRESS, INC., BANKRUPT,
C. ORVIS SOWERWINE,
TRUSTEE IN BANKRUPTCY,
Petitioner,

v.

UNITED STATES OF AMERICA
and
INTERSTATE COMMERCE COMMISSION,
Respondents.

JOINT APPENDIX

VOLUME I



PAGINATION AS IN ORIGINAL COPY

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MC-C-8862

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Before the

INTERSTATE COMMERCE COMMISSION

Washington, D. C. 20423

COMPLAINT

MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC.
Kokomo, Indiana

v.

REXCO, INC.
219 East 42nd Street
New York, N. Y. 10017

and

R.E.A. Express, Inc.
219 East 42nd Street
New York, N. Y. 10017

Edward K. Wheeler
Eldon S. Olson
Richard H. Streeter

Attorneys for Brada Miller
Freight System, Inc.

OF COUNSEL:

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704 Southern Building
Washington, D. C. 20005

Before the

INTERSTATE COMMERCE COMMISSION

Washington, D. C. 20423

COMPLAINT

BRADA MILLER FREIGHT SYSTEM, INC.
Kokomo, Indiana

v.

REXCO, INC.
219 East 42nd Street
New York, N. Y. 10017

and

R.E.A. Express, Inc.
219 East 42nd Street
New York, N. Y. 10017

The complaint of the above-named complainant respectfully shows:

I. Brada Miller Freight System, Inc. (Brada Miller), complainant, is a corporation organized and existing under the laws of the State of Indiana; its business address is 1210 Union Street, Kokomo, Indiana 46901. Brada Miller is operating as an irregular-route motor common carrier in interstate commerce pursuant to certificates of public

convenience and necessity issued by the Interstate Commerce Commission under the lead certificate issued in Docket No. MC-29079 and sub numbers thereto.

II. Rexco, Inc. (Rexco), defendant, is a non-express company whose stock is wholly owned by R.E.A. Express, Inc., a Delaware corporation. Its business address is 219 East 42nd Street, New York, New York 10017. As particularly relates to this complaint, Rexco has no authority to conduct motor common carrier operations in interstate commerce.

III. R.E.A. Express, Inc., defendant, is an express company authorized to conduct operations in interstate commerce and foreign commerce under Parts I and II of the Interstate Commerce Act pursuant to authority granted in Docket No. 66562 and sub numbers thereto. R.E.A. Express, Inc., which had been operating as a Debtor-in-Possession under Chapter XI of the Bankruptcy Act, was by Order of Court entered November 6, 1975, adjudicated a bankrupt and ordered liquidated. Thereafter, on November 7, 1975, R.E.A. Express, Inc. filed "Embargo Notice No. 1" placing an embargo against all traffic tendered to R.E.A. Express, Inc. after 12:01, Friday, November 7, 1975.

IV. By virtue of a tariff issued June 10, 1975, effective June 15, 1975, I.C.C. 153, Commodity Tariff 85, Rexco allegedly a division of R.E.A. Express, Inc., without any certificates of public convenience and necessity or permits, has commenced operations and has

transported shipments in interstate and foreign commerce as a motor common carrier for hire in violation of Section 203(c) of the Interstate Commerce Act, 49 U.S.C. § 303(c). Upon information and belief, it is alleged that Rexco has also solicited further shipments from United States Steel Corporation, Republic Steel Corporation, and Inland Steel, and has held itself out to engage in the transportation of iron and steel for these companies in interstate commerce.

V. Upon information and belief, it is alleged that Rexco purports to operate under those certificates issued by the Interstate Commerce Commission to R.E.A. Express, Inc. in Docket No. MC-66562 and subs thereunder. Those certificates, however, authorize only the transporation by R.E.A. Express, Inc. of shipments moving in express service over regular routes, and do not authorize opeations by Rexco or any other company owned or controlled by R.E.A. Express, Inc.

VI. Even if Rexco may be authorized to operate under those certificates held by R.E.A. Express, Inc., Rexco is transporting iron and steel and other commodities in ordinary freight service which is beyond the scope of "express" movements authorized by R.E.A. Express' certificates and temporary authority. On information and belief, Rexco is operating over irregular routes instead of regular routes; commodities are not being moved on prearranged, firmly established schedules or accorded special expedited service;

it is not charging premium rates; and it is not confining its movements to those handled in ordinary van equipment as has been required by the Commission. See e.g., REA Express, Inc., Application for ETA, 117 M.C.C. 80, 88-90 (1971); and Transportation Activities of Arrowhead Freight Lines, 63 M.C.C. 573, 579-582 (1955). Such operations as are being performed by Rexco are indistinguishable from those of ordinary motor carriers and may not be performed in the absence of appropriate authority from the Interstate Commerce Commission.

VII. By reason of the facts stated in the foregoing paragraphs, Rexco and R.E.A. Express, Inc. have been and are engaging in the interstate transportation of general commodities by motor carrier in ordinary freight service between points in the United States without authority from the Commission in violation of Sections 203(c) and 206(a)(1) of the Act. These unlawful operations are in competition with complainant's authorized operation and are, thus, unlawfully depriving complainant of much needed revenues.

WHEREFORE, complainant prays that an order be issued commanding said defendants, and each of them, to cease and desist from the aforesaid violations of said Act, and that such other and further order or orders be issued as the Commission may consider proper in the premises.

Dated this 25th day of November, 1975.

Complainant contends that the relief sought is not a major federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969.

BRADA MILLER FREIGHT SYSTEM, INC.

By: _____

Edward K. Wheeler
Elden S. Olson
Richard H. Streeter

CIB

SERVICE DATE

DEC 15 1975

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C.

December 8, 1975

NO. MC-C 8862

BRADA MILLER FREIGHT SYSTEM, INC.

-v-

REXCO, INC., ET AL

NOTICE TO DEFENDANTS:

Herewith is a copy of a complaint filed with the Interstate Commerce Commission in the above-entitled proceeding.

Defendants are hereby called upon to satisfy the complaint or to answer the same in writing within twenty days from this service date.

Complainant contends that the relief sought is not a major federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969.

ROBERT L. OSWALD,

Secretary

Copy to:

Branda Miller Freight System, Inc.
1210 Union St.
Kokomo, IN. 46901

Richard H. Streeter
704 Southern Bldg.
1425 H. St. N.W.
Washington, DC. 20005

#4

C.I. 1

BEFORE THE

INTERSTATE COMMERCE COMMISSION

- x

BRADA MILLER FREIGHT SYSTEM, INC.,:

Complainant, :

v. : No. MC-C 8862

REXCO, INC. and REA EXPRESS, INC.,:

Defendants. :

- x

ANSWER OF REXCO, INC. AND REA EXPRESS, INC. TO THE COMPLAINT OF BRADA MILLER FREIGHT SYSTEM, INC.

Respectfully submitted,

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New York, New York 10036
and
MARCUS & ANGEL
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Co-Counsel to the Trustee

WISEHART & KOCH
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Washington, D. C. 20005

Special Counsel to the Trustee

Of Counsel

Donald L. Wallace
Frank M. Buscaglia
John M. Cleary

BEFORE THE

INTERSTATE COMMERCE COMMISSION

- x

BRADA MILLER FREIGHT SYSTEM, INC.,:

Complainant, :

v. : No. MC-C 8862

REXCO, INC. and REA EXPRESS, INC.,:

Defendants. :

- x

ANSWER OF REXCO, INC. AND REA EXPRESS, INC. TO THE COMPLAINT OF BRADA MILLER FREIGHT SYSTEM, INC.

Comes now C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc. (REA or Defendant) by his counsel, and answers the Complaint of Brada Miller Freight System, Inc. (Complainant) as follows.

I

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph I of the Complaint.

II

Defendant admits the allegations set forth in paragraph II of the Complaint. Defendant further responds to such allegations by noting that REXCO, Inc., is a distinct corporate entity whose stock is wholly owned by Defendant REA and is not in any way related to the REXCO Division of REA Express, Inc.

III

Defendant admits the allegations set forth in paragraph III of the Complaint and further responds to such allegations by noting that by Amendment No. 1 to Embargo Notice No. 1 issued November 10, 1975, Defendant qualified its original Embargo Notice to emphasize that such embargo did not affect the operations of the REXCO Division.

IV

Defendant answers the allegations set forth in paragraph IV of the Complaint as follows:

1. Commodity Tariff 85, I.C.C. 153, was filed on May 13, 1975 and became effective on July 15, 1975.

2. The REXCO Division of REA Express, Inc., is an operating division of REA.

3. The REXCO Division has transported shipments in interstate commerce and solicits such shipments from various customers.

Defendant denies all other allegations raised in paragraph IV of the Complaint.

V

Defendant admits the allegations set forth in paragraph V of the Complaint to the extent that such allegations state that the REXCO Division operates pursuant to Certificates of Public Convenience and Necessity issued by the Interstate Commerce Commission to REA.

Defendant denies all other allegations raised in paragraph V of the Complaint.

10

VI

Defendant denies the allegations set forth in paragraph VI of the Complaint.

VII

Defendant denies the allegations set forth in paragraph VII of the Complaint.

WHEREFORE, Defendant pravs that the Complaint herein be dismissed.

Dated: Washington, D.C.
January 5, 1976

Respectfully submitted,

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and
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Special Counsel to the Trustee

CI 5

Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC. and REA EXPRESS, INC.
MC-C-8862

SCHNEIDER TRANSPORT, INC.
v.
REA EXPRESS, INC.
MC-C-8864

ASSOCIATED TRUCK LINES, INC., et al.
v.
REA EXPRESS, INC.
MC-C-8874

MOTION SEEKING CONSOLIDATION OF COMPLAINTS AND DISCOVERY PURSUANT TO RULES 56, 57, 58, AND 62, 49 C.F.R. §§1100.56-58, AND 62, AS AMENDED BY ORDER OF OCT. 11, 1974, EFFECTIVE JANUARY 14, 1975

By: Richard H. Streeter
Rex Eames
Daniel Sullivan
Attorneys for Complainants

OF COUNSEL:

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Chicago, Illinois 60604

FEBRUARY 9, 1976

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Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC. and REA EXPRESS, INC.
MC-C-8862

SCHNEIDER TRANSPORT, INC.
v.
REA EXPRESS, INC.
MC-C-8864

ASSOCIATED TRUCK LINES, INC., et al.
v.
REA EXPRESS, INC.
MC-C-8874

MOTION SEEKING CONSOLIDATION OF COMPLAINTS AND DISCOVERY PURSUANT TO RULES 56, 57, 58, AND 62, 49 C.F.R. §§1100.56-58, AND 62, AS AMENDED BY ORDER OF OCT. 11, 1974, EFFECTIVE JANUARY 14, 1975

CONSOLIDATION

COMES NOW BRADA MILLER FREIGHT SYSTEM, INC.,[1/] ARTIM TRANSPORTATION SYSTEM, INC.,[2/] SCHNEIDER TRANSPORT, INC.[3/] and ASSOCIATED TRUCK LINES, INC., et al.,[4/] and jointly request the Commission to consolidate their various complaints against

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1/ Complainant in Docket No. MC-C-8862
2/ Intervening Complainant in Docket No. MC-C-8862
3/ Complainant in Docket No. MC-C-8864
4/ Complainant in Docket No. MC-C-8874

REA Express, Inc. and, in particular, Rexco A Division of REA Express, Inc. Since the complaints all seek the issuance of a cease and desist order, as well as other appropriate relief, against Rexco's operations, the consolidation of the complaints will benefit all parties by removing needless duplication of effort and expense, and will allow the Commission to reach a single determination concerning the legality of the operations being conducted by Rexco.

DISCOVERY

In order to expedite this matter, as well as clarify and simplify the evidence, complainants respectfully request the Commission to permit the immediate initiation of discovery. At present, complainants contemplate the use of interrogatories, subpoenas and depositions. Since the Commission's advance approval is not required before serving interrogatories, the above complainants have this day served interrogatories on the officers of REA Express, Inc. and Rexco A Division of REA Express, Inc. (hereinafter "REA" and "Rexco" respectively) which are to be answered within 15 days. It is anticipated that the information sought thereby will help to identify all relevant documents held by REA and Rexco that are germane to the present inquiry and will serve to simplify any further discovery. (A copy of the interrogatories, which has been independently served on the Commission as required by Rule 62, is attached as Appendix A.)

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(1) Subpoenas

Since the issues in these proceedings are primarily concerned with the method of operations of Rexco, and since REA in its various answers to the complaints filed herein has simply denied all allegations concerning Rexco's method of operations, it is requested that the Commission immediately issue subpoenas upon, or otherwise order, Mr. C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., Mr. Tom Kole, President of REA Express, Inc., and Mr. Donald Williams, Manager, Rexco A Division of REA Express, Inc., requiring them to produce all books, papers, tariffs, contracts, agreements and documents in their possession that will provide accurate and complete information regarding Rexco's operations; and to make available all such documents and papers to the various complainants for inspection and copying within 30 days of the service of the subpoenas.

It is believed that this procedure, by limiting the number of requests for subpoenas that will otherwise be forthcoming, will expedite the disposition of this proceeding and will reduce the burden to respondents of producing the documents. Furthermore, it will facilitate the development of the procedures ultimately to be followed by permitting the parties jointly to consider the witnesses to be called, and will otherwise aid in the presentation of the evidence. Complainants, of course, must reserve the right to seek

further subpoenas should additional documents and materials become necessary to the disposition of this matter.

In issuing these subpoenas, it is requested that the Commission, among other items, require the production of all books, papers, tariffs, contracts, agreements and documents having a bearing on the genesis and development of the Rexco division and its operations. Also that the Commission require the production of documents reflecting the terms, conditions, instructions and arrangements between Rexco and owner-operators, and all other persons, engaged in the movement of goods in interstate commerce, including all instructions issued by Rexco to such persons concerning the routes to be traversed in the performance of such movements.

It is further requested that the Commission, among other items, require the production of all books, papers, tariffs, contracts, agreements and documents reflecting the terms, conditions, instructions and arrangements which Rexco has with brokers, and all other persons, engaged in the solicitation of shipments to be moved in interstate commerce.

The subpoenas should further require the production of dispatch sheets, schedules governing pickups and deliveries, drivers' logs, brochures, sales brochures and any other similar records which would reflect Rexco's method of operations. A detailed form for these subpoenas is attached as Appendix B.

In seeking the immediate issuance of these subpoenas, complainants submit that the documents requested are relevant to the present inquiry and will provide the most reliable evidence concerning the legality of Rexco's operations.[5/] In their complaints filed in this matter, petitioners have generally and specifically pleaded that Rexco's operations are indistinguishable from those of motor common carriers of general commodities under Part II of the Act. Furthermore, petitioners have alleged that Rexco's operations are not being conducted within the scope of REA's outstanding certificates of public convenience and necessity, and temporary authorities which are restricted to shipments moving in express service. In support thereof, petitioners have alleged that Rexco's operations fail to satisfy the basic indicia of express service as defined by the Commission, including the failure to perform actual operations between all authorized points upon firmly established schedules, the failure to observe the regular routes established by REA's certificates and temporary authorities, the failure to charge premium rates, and the failure to confine its operations to ordinary van equipment. Furthermore, petitioners have alleged that Rexco has used owner-operators in a "call-on-demand," unscheduled operation and has established a

---

5/ In requesting the immediate issuance of these subpoenas, complainants ask the Commission to take cognizance of the fact that every day that Rexco conducts its allegedly illegal operations that complainants are suffering irreparable harm. Thus, it is imperative that steps be taken to resolve this problem with a minimum of delay.

level of rates that are unreasonable and noncompensatory in nature. In short, Rexco has so altered the traditional express service rendered by REA that it cannot be considered to be conducting anything other than ordinary freight service.

In seeking discovery, petitioners are attempting to obtain those records in the possession or custody of REA and Rexco that will reflect the true nature of Rexco's operations. It is petitioners' position that the documents sought to be obtained will contain evidence that will substantiate their allegations concerning Rexco's operations and will demonstrate that Rexco is not performing an express service as defined by the Commission, but is rather conducting operations that are virtually identical to those which this Commission refused to authorize only four years ago. See REA Express, Inc., Application for Emergency Temporary Authority, 117 M.C.C. 80 (1971).

Moreover, since Rexco's operations were commenced in July 1975, and since the plans concerning Rexco's proposed operation were apparently formulated in the first part of 1975, the above request for documentary evidence should not work any hardships on the individuals involved. Since the above-named persons, and in particular Mr. Williams, are intimately involved with Rexco's day-to-day operations, as well as its origins, they should be knowledgeable concerning the existence of the above evidence and should

be able to promptly furnish such evidence as set forth in Appendix B.

(2) Depositions

It is also requested that the Commission, pursuant to Rule 58 of its Rules, 49 C.F.R. §1100.58, authorize the taking of the depositions of Mr. Sowerwine, Mr. Kole and Mr. Williams within thirty days following production and inspection of the above documents. Upon information and belief, Mr. Sowerwine's and Mr. Kole's address is 219 E. 42nd Street, New York, N. Y. 10017. Mr. Williams' address is 411 Smiley Building, Philadelphia, Pa. 19152. Complainants believe that the time, place, and the name and office of the officer before whom the depositions will be taken are matters which can be resolved by agreement of the parties. The taking of depositions will permit the parties to develop evidence to supplement that disclosed by the documents whose production is requested above and will aid the Commission in reaching its decision. Petitioners intend, as it becomes necessary, to request the taking of depositions from other persons who appear to possess relevant information.

CONCLUSION

In asking that the Commission give this matter immediate attention, complainants are not unmindful of the heavy caseload confronting the Commission. However,

this is a matter of general transportation importance as witnessed by the participation of not only individual motor carriers licensed by this Commission which are being adversely affected by Rexco's operations, but also the related complaint filed by the American Trucking Association. In suggesting the above procedures, complainants have sought to develop a means of expeditiously and economically obtaining the necessary evidence for a prompt determination of the issues. Since the evidence sought to be obtained hereby will, in large measure, form the basis for legal argument concerning the scope of REA's certificates of public convenience and necessity, it may be possible to reduce significantly the need for oral hearing and to move directly to the briefing of the legal issues involved. Finally, complainants respectfully submit that the time-tables requested herein will not cause undue burden on any party and will promote the prompt resolution of this problem.

Respectfully submitted,

Richard H. Streeter

Rex Eames /ptb

Rex Eames

Daniel Sullivan /ptb

Daniel Sullivan

BEST COPY AVAILABLE

C.I. 6

APPENDIX A

Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC. and REA EXPRESS, INC.
MC-C-8862

SCHNEIDER TRANSPORT, INC.
v.
REA EXPRESS, INC.
MC-C-8864

ASSOCIATED TRUCK LINES, INC., et al.
v.
REA EXPRESS, INC.
MC-C-8874

INTERROGATORIES

By: Richard H. Streeter
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Daniel Sullivan
Attorneys for Complainants

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FEBRUARY 9, 1976

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Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC. and REA EXPRESS, INC.
MC-C-8862

SCHNEIDER TRANSPORT, INC.
v.
REA EXPRESS, INC.
MC-C-8864

ASSOCIATED TRUCK LINES, INC., et al.
v.
REA EXPRESS, INC.
MC-C-8874

INTERROGATORIES

By this document, complainants[1/] hereby serve on REA Express, Inc. and Rexco A Division of REA Express, Inc., pursuant to Rule 62 of the General Rules of Practice of the Interstate Commerce Commission, 49 C.F.R. §1100.62, the following interrogatories to be answered by its officers, separately and under oath, within 15 days of the service thereof. These interrogatories shall be deemed continuing,

---

1/ Although the Commission has not yet formally consolidated the various complaints filed above, complainants, in order to remove needless duplication of effort and expense, hereby file this joint request for interrogatories.

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and if additional information is obtained indicating that an incorrect or incomplete answer has been given to any of these interrogatories, a corrected answer shall thereafter immediately be served on complainants' attorneys.

These interrogatories are intended to cover all records in possession of any of the defendants, REA Express, Inc., its Trustee in Bankruptcy, or Rexco A Division of REA Express, Inc., and their officers, or subject to their custody and control, whether they are located in any of defendants' district offices, any of their division offices, or any other office maintained by the defendants, or any of them.

As used in this request, the term "records" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand: computer printouts, agreements, contracts, communications, state and federal governmental hearings and reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigation or negotiations, opinions or reports of consultants, photographs, motion picture film, brochures, pamphlets, advertisements, circulars,

press releases, drafts, letters, any marginal comments appearing on any document, and all other writings.

I.

Identify and give the location of all records kept in the regular course of business by REA Express, Inc. (hereinafter "REA") and by Rexco A Division of REA Express, Inc. (hereinafter "Rexco") which contain information concerning the following items:

(1) the present location of all individuals, either employees, independent owner-operators or other persons, who have transported shipments in interstate commerce on behalf of, or under the authority of, Rexco;

(2) the points between which they moved;

(3) the dates of the movements; and

(4) a description of the freight transported, the weight of the shipments; and the revenues generated therefrom.

II.

Identify and give the location of all records kept in the regular course of business by REA and Rexco which contain information concerning the following items:

(1) the names and present locations of all individuals who have received payments, or who are owed payment and the amount thereof, for services rendered on behalf of Rexco as sales agent, or a similar capacity, for the solicitation of traffic; and

(2) the dates during which they performed the services for which payment was made or is owing.

III.

Identify and give the present locations of all persons who worked on the formulation of Rexco's operations, including, but not limited to, persons in charge of developing the rates and charges underlying Commodity Tariff 85, I.C.C. 153, and persons in charge of determining that Rexco's operations are authorized by the certificates of public convenience and necessity issued by the Interstate Commerce Commission to REA Express, and describe their role or function in respect thereof.

IV.

Identify all certificates of public convenience and necessity, including all subs, presently held by REA Express, Inc., under which Rexco has been conducting operations that are not restricted to the transport of commodities in express movements.

V.

Identify and give the locations of all records kept in the course of business by REA and Rexco regarding sales calls made by Rexco or REA personnel and indicate the disposition of such sales calls if available.

VI.

Identify and give the locations of all terminals and facilities being operated by Rexco since the filing of Amendment No. 1 to Embargo Notice No. 1.

VII.

Identify and give the locations of all terminals and facilities being operated by Rexco and used for the consolidation of shipments since the filing of Amendment No. 1 to Embargo Notice No. 1.

VIII.

Identify and give the locations of all records kept in the normal course of business by REA and Rexco which will identify by serial number and description all over-the-road tractors and trailers owned and operated by Rexco since the filing of Amendment No. 1 to Embargo Notice No. 1.

IX.

Identify and give the locationsof all records kept in the normal course of business by REA and Rexco which will identify by serial number and description all over-the-road tractors and trailers operated by Rexco since the filing of Amendment No. 1 to Embargo Notice No. 1 and owned by owner-operators, fleet operators or equipment leasing companies pursuant to appropriate long-term leases.

X.

Identify and give the locations of all records kept in the regular course of business by REA and Rexco which pertain to a policy, practice or system relative to equipment utilization including (a) where the equipment unloads, and/or (b) where the equipment next loads.

XI.

Identify and give the locations of all records kept in the regular course of business by REA and Rexco relative to dead-heading of equipment.

XII.

Identify and give the locations of all records kept in the regular course of business by REA and Rexco relative to REA's and Rexco's maintenance, upkeep, fuel and insurance expenses in the Rexco operations and the funds expended by REA and Rexco to satisfy these expenses.

Respectfully submitted,

Richard H. Streeter
Rex Eames
Daniel Sullivan
Attorneys for Complainants

APPENDIX B

NOW COME the complainants in the above-entitled cause, pursuant to Rule 56 of the General Rules of Practice of the Interstate Commerce Commission, and request that defendants produce the documents hereinafter described and permit complainants and their attorneys to inspect them and copy such of them as they may desire. Complainants request that the documents be made available for this inspection at defendants' offices in Philadelphia, or at such other offices of defendants as may be the location of any of the documents requested, in normal business hours, with the least possible disruption to the ordinary course of defendants' duties and responsibilities. Complainants further request that this inspection be permitted by defendants immediately after defendants' response to this request has been filed, and that their attorneys be permitted to remove from defendants' custody such of the documents as they desire to copy, on the understanding that complainants' attorneys will be responsible for these documents so long as they are in their possession, that copying will be done at complainants' expense, and that the documents will be promptly returned immediately after copying has been completed.

This request is intended to cover all documents in possession of any of the defendants, REA Express, Inc., its Trustee in Bankruptcy, or Rexco A Division of REA Express, Inc., and their officers, or subject to their custody and control, whether they are located in any of defendants' district offices,

any of their division offices, or any other office maintained by the defendants, or any of them.

As used in this request, the term "document" means, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or produced by hand: computer printouts, agreements, contracts, communications, state and federal governmental hearings and reports, correspondence, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, note charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigation or negotiations, opinions or reports of consultants, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document, and all other writings.

The documents covered by this request are as follows:

Item 1. All documents prepared, sent or received by either REA Express, Inc., Rexco A Division of REA Express, Inc., or their representatives, which relate to the following:

a. Any consideration, proposal, study or negotiation concerning the creation of the Rexco division;

b. The genesis and development of guidelines to govern the operations of the Rexco division.

c. All computations, estimates, forecasts and studies concerning anticipated traffic to be generated by Rexco;

d. The identification of the individual officers and employees of REA Express, Inc. who participated in the formulation, study analysis, or planning of the Rexco division;

e. The identification of any individuals, whether accountants, lawyers, financial advisers, or otherwise, who participated in the formulation, study, analysis, or planning of the Rexco division;

f. The substance of any advice given to those individuals in charge of setting up the Rexco division, either by officers or employees, or by any others acting in a consulting or advisory or representative capacity in connection with the formulation, analysis or planning of the Rexco division;

g. The genesis and development of Commodity Tariff 85, I.C.C. 153; and

h. Any consideration, proposal or study concerning Amendment No. 1 to Embargo Notice No. 1.

Item 2. All documents, contracts or agreements which reflect the terms, conditions, instructions and arrangements which Rexco has with owner-operators, and all other persons, engaged in the movement of goods in interstate commerce, including, but not limited to, the following:

a. All instructions issued by Rexco concerning the routes to be traversed in the performance of movements;

b. All instructions issued by Rexco concerning the solicitation of shipments;

c. All instructions issued by Rexco concerning the commodities to be transported;

d. All documents which relate to the inspection and maintenance of vehicles and compliance with the safety rules and regulations of the Interstate Commerce Commission and the Department of Transportation;

e. All instructions issued by Rexco concerning the points to be served;

f. All documents concerned with compensation by Rexco; and

g. All instructions concerning the maintenance of drivers' logs.

Item 3. All documents, contracts or agreements which reflect the terms, conditions, instructions and arrangements which Rexco has with brokers, and all other persons engaged in the solicitation of shipments to be moved in interstate commerce including, but not limited to, the following:

a. All instructions issued by Rexco concerning the commodities to be transported;

b. All instructions issued by Rexco concerning the points at which shipments may be solicited;

c. All documents concerned with compensation by Rexco; and

d. All instructions issued by Rexco concerning the scope and interpretation of the certificates of public convenience and necessity held by REA Express, Inc.

Item 4. All records, statements, documents, or other writings showing the expenses incurred to date by, or on behalf of, Rexco in connection with the transportation of shipments in interstate commerce, showing among other matters the source of the funds and the parties charged with the responsibility for their payment.

Item 5. All records, statements, documents, brochures, sales brochures or other writings which explain the type of service to be rendered by Rexco in connection with the transportation of shipments in interstate commerce.

Item 6. All records, statements and documents, whether in the possession of REA Express, its Trustee in Bankruptcy, or Rexco, relative to the expenditures by any corporation or individual associated with REA Express, Inc. for the establishment of the Rexco Division.

CI 7

BEFORE THE

INTERSTATE COMMERCE COMMISSION

BRADA MILLER FREIGHT SYSTEM, INC., Complainant,	:	
v.	:	MC-C-8862
REXCO, INC. and REA EXPRESS, INC., Defendants.	:	
SCHNEIDER TRANSPORT, INC., Complainant,	:	
v.	:	MC-C-8864
REA EXPRESS, INC., Defendant.	:	
ASSOCIATED TRUCK LINES, INC., et al., Complainants,	:	MC-C-8874
v.	:	
REA EXPRESS, INC. Defendant.	:	

ANSWERS TO INTERROGATORIES
SUBMITTED ON BEHALF OF
REXCO, INC. AND
REA EXPRESS, INC.

Respectfully submitted,

WHITMAN & RANSOM
522 Fifth Avenue
New York, New York 10036
and
MARCUS & ANGEL
60 East 42nd Street
New York, New York 10022

Co-Counsel to the Trustee

WISEHART, FRIOU & KOCH
219 East 42nd Street
New York, New York 10017
and
DONELAN & CLEARY
15th Street & N.Y. Avenue, N.W.
Washington Building
Washington, D.C. 20005

John M. Cleary

Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace, Esq.
Frank M. Buscaglia, Esq.
John M. Cleary, Esq.

Dated: Washington, D.C.
, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

BRADA MILLER FREIGHT SYSTEM, INC., Complainant,	:	
v.	:	MC-C-8862
REXCO, INC. and REA EXPRESS, INC., Defendants.	:	
SCHNEIDER TRANSPORT, INC., Complainant,	:	
v.	:	MC-C-8864
REA EXPRESS, INC., Defendant	:	
ASSOCIATED TRUCK LINES, INC., et al., Complainants,	:	
v.	:	MC-C-8874
REA EXPRESS, INC., Defendant.	:	

Defendants REA Express, Inc. and REXCO, Inc. (hereinafter collectively referred to as "REA") answer the interrogatories served upon them by the above-referenced Complainants as follows*:

---

*Defendants were permitted an extension of time until March 17, 1976, within which to answer said interrogatories.

I

REA objects to this Interrogatory as unduly burdensome to answer. However, REA will make available for inspection and copying by counsel for Complainants, at a time mutually convenient to counsel for REA, documents responsive to this Interrogatory. Such documents are presently located at the corporate headquarters of REA, 219 East 42nd Street, New York, New York, and will be made available for inspection and copying at the offices of Wisehart, Friou & Koch, Special Counsel to the Trustee, located at 219 East 42nd Street, New York, New York.

II

See the response to Interrogatory I, supra.

III

Mr. Donald W. Williams, who is presently General Manager of the REXCO Division with offices at 8001 Roosevelt Boulevard, Philadelphia, Pennsylvania 19152, was primarily responsible for the formulation of the REXCO Division's operations as well as the development of the rates and charges underlying Commodity Tariff 85, I.C.C. 153.

Mr. Williams' work was casually reviewed by Mr. James G. Cunningham, then Senior Vice President, Operations/ Maintenance of REA. Upon information and belief, Mr. Cunningham is presently employed by Gateway Transport, LaCrosse, Wisconsin. REA is not aware of Mr. Cunningham's actual present location.

Mr. Williams was to some extent assisted in the formulation of Commodity Tariff 85, I.C.C. 153, by Mr. Myron

Engelsher, REA Director, Marketing and Pricing. Mr. Engelsher's present location is not known.

The overall operation of the REXCO Division was discussed by Mr. Williams with Mr. Michael J. Briody, then REA Director of Economic Regulation and Pricing and presently employed by Cosmair, Inc., 222 Terminal Avenue, Clark, New Jersey 07066 and John J. C. Martin, Esq., then REA Vice President, Economic Regulation and presently associated with the law firm of Arsham & Keenan, 277 Park Avenue, New York, New York 10017.

IV

REA objects to the Interrogatory as unduly burdensome and as eliciting information which is available to Complainants from public records.

V

No records have been kept by REA or the REXCO Division regarding sales calls made by REXCO Division or REA Personnel. Sales efforts have consisted almost exclusively of telephone contacts made by Mr. Williams and Agents. See Attachment A.

VI

The REXCO Division has not and does not now operate terminals and facilities as such. The REXCO Division does maintain a number of agency stations, a list of which is annexed hereto and incorporated herein as Attachment A.

VII

The REXCO Division has not and does not now operate any terminals or facilities used for the consolidation of shipments.

VIII

No such records are extant.

IX

The response to Interrogatory I, supra, is incorporated herein by reference.

X

The documents which will be made available for inspection and copying in response to Interrogatory I are responsive to sub-division (a) of this Interrogatory. No documents are extant which are responsive to sub-division (b) of this Interrogatory.

XI

No such documents are extant.

XII

No documents are extant which relate to maintenance, upkeep and fuel expenses of the REXCO Division's operations or funds expended to satisfy such expenses. Documents pertaining to insurance expenses and funds expended to satisfy such expenses will be made available for inspection and copying at a time mutually convenience to counsel at the offices of Wisehart, Friou & Koch, 219 East 42nd Street, New York, New York.

STATE OF PENNSYLVANIA)
: ss.:
COUNTY OF PHILADELPHIA)

DONALD W. WILLIAMS, being duly sworn, deposes and says that he is General Manager of the REXCO Division of REA Express, Inc., one of the defendants herein. He has read the foregoing Answers to Interrogatories and is familiar with the contents thereof; and they are true to the best of his knowledge, information and belief.

Donald W. Williams

Donald W. Williams

Sworn to before me

this 16 day of March, 1976

Notary Public

REXCO

a division of REA Express

8001 ROOSEVELT BLVD.
SUITE 102
PHILADELPHIA, PA. 19152
(215) 332-0230

February 10, 1976

STATION LIST

TERMINAL	AGENT	PHONE #
Albany, N.Y.	Gordon Sands	800-833-9896
Allentown, PA.	Allen Schware	215-395-5843
Andover, Mass.	Lou Paquette	617-470-0021
Ashville, N.C.	Dan Henderson	704-649-3654
Atlanta, GA	Harold Wright	404-289-8176
Augusta, GA	Hank Garrad	404-736-7135
Baltimore, MD	Gene Burchette	301-679-1910
Birmingham, Ala.	Bill Phillips	205-798-0397
Buffalo, N.Y.	Dan Celani	716-649-0990
Calvert City, KY	Stan Williams	502-395-7511
Chattanooga, Tenn.	Charles Roberts	615-738-2237
Chicago, Ill.	Sam Glickstein	312-538-5800
Cochran, GA	Buddy Hamrick	912-934-7756
Columbus, Ohio	William Beebe	614-836-5700
Dallas, TX	Bud Davidson	214-253-5495
Detroit, Mich.	Stanley Brown	313-584-5405
Dyersburg, Tenn.	Bill Pendleton	901-285-2871
Edison, N.J.	Mike Marino	201-985-5262
Greensboro, N.C.	Mike Drum	919-855-7949
Houston, TX	Jack Lazure	713-224-7150
Kansas City, Kan.	Dick Morgan	913-371-4474
Kearny, N.J.	Arthur Acerno	201-344-6057
Kingsport, Tenn.	Jim Miller	615-247-4901
Knoxville, Tenn.	Curtis Roberts	615-690-2174
Little Rock, Ark.	C.K. Powell	501-376-2329
Louisville, KY	Steve Vaughn	800-457-9181
Maywood, N.J.	Joseph Carretta	201-843-2440
Memphis, Tenn.	Ron Freeman	901-332-7090
Miami, Fla.	Sid Glickstein	305-558-1630
Mpls., Minn.	John Smith	612-455-1500
Nashville, Tenn.	Gerald Roberts	615-256-4198
New Orleans, La.	Richard Hodges	504-733-6571
North Walpole, N.H.	Roland Ternksburg	603-445-5111
Omaha, Neb.	Charlie Barton	402-451-5012
Phila., PA	Charlie Muir	215-744-4131
Pomfrit Center, Conn.	Mike Langey	203-928-0029
Portage, Ind.	Bill Miller	219-762-7724
Richmond, VA	Clay Hagy	804-798-6038
Riverton, N.J.	Bill Gardiner	609-829-4501
Rutland, VT	Monty Keeler	800-451-4229
Swanton, VT	Roxy Eldridge	802-868-2948
Tampa, Fla.	Bud Brown	813-876-0427
Waycross, GA	C.L.Roberts	912-285-3501
Wilmington, N.C.	Bill Fletcher	919 329-7541
Winchester, VA	Earl Haines	703-662-0461

ATTACHMENT A

10

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Brada Miller Freight System, Inc. v. REA Express, Inc.	Docket MC-C-8862
Schneider Transport, Inc. v. REA Express, Inc.	Docket MC-C-8864
American Trucking Associations, Inc. v. REXCO, Inc. and REA Express, Inc.	Docket MC-C-8867
Associated Truck Lines, Inc. v. REA Express, Inc.	Docket MC-C-8874
Central and Southern Motor Freight Tariff Association - Petition Requesting That Certain Tariff Matter Be Stricken	Docket No. 36285

PETITION TO CONSOLIDATE THE PROCEEDINGS
AND REPLY TO MOTION SEEKING
CONSOLIDATION OF COMPLAINTS AND DISCOVERY

Respectfully submitted,

WHITMAN & RANSOM
522 Fifth Avenue
New York, New York 10036
and
MARCUS & ANGEL
60 East 56th Street
New York, New York 10022

Co-Counsel to the Trustee

WISEHART, FRIOU & KOCH
219 East 42nd Street
New York, New York 10017
and
DONELAN & CLEARY
15th Street & New York Avenue, N.W.
Washington, DC 20005

Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
Frank M. Buscaglia
John M. Cleary

Dated: Washington, DC
April 6, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

Brada Miller Freight System, Inc. v. REA Express, Inc.	Docket MC-C-8862
Schneider Transport, Inc. v. REA Express, Inc.	Docket MC-C-8864
American Trucking Associations, Inc. v. REXCO, Inc. and REA Express, Inc.	Docket MC-C-8867
Associated Truck Lines, Inc. v. REA Express, Inc.	Docket MC-C-8874
Central and Southern Motor Freight Tariff Association - Petition Requesting That Certain Tariff Matter Be Stricken	Docket No. 36285

PETITION TO CONSOLIDATE THE PROCEEDINGS
AND REPLY TO MOTION SEEKING
CONSOLIDATION OF COMPLAINTS AND DISCOVERY

Comes now C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc. and REXCO, a division of REA Express, Inc., and requests the Commission to consolidate various complaints and petitions directed against REA Express, Inc. and, in particular, REXCO, a division of REA Express, Inc. and hereby replies to the motion Seeking Consolidation of Complaints and Discovery filed by certain complainants.*

---

*Brada Miller Freight System, Inc. (Docket No. MC-C-8862), Schneider Transport, Inc. (Docket No. MC-C-8864), Associated Truck Lines, Inc., et al. (Docket No. MC-C-8874). The instant Petition is also submitted in response to the Motion of American Trucking Association, Inc. for Expedited Handling filed with the Commission on February 2, 1976.

I

The complaints and the petition all seek the issuance of a cease and desist order or other relief against the operations of the REXCO division of REA Express, Inc. on the ground that the operations of the REXCO division are not being conducted in accordance with appropriate authority issued by the Interstate Commerce Commission. The legal and factual issues raised by the proceedings are generally the same.

A consolidation of the proceedings will benefit all parties, including the Trustee in Bankruptcy of REA Express, Inc., by removing needless duplication of effort and expense. The consolidation will allow the Commission to reach a single determination concerning the legality of the operations being conducted by the REXCO division of REA Express, Inc.

The consolidation sought by the Motion filed in Docket Numbers MC-C-8862, MC-C-8864 and MC-C-8874 does not include the complaint filed by American Trucking Associations, Inc. (Docket Number MC-C-8867) and the petition filed by the Central and Southern Motor Freight Tariff Association (Docket No. 36285).

It is the Trustee's position that the proceedings in Docket Numbers MC-C-8867 and 36285 are properly subject to consolidation with the proceedings in Docket Numbers

MC-C-8862, MC-C-8864 and MC-C-8874 for the reasons already discussed.

II

Complainants' Motion Seeking Consolidation of Complaints and Discovery was accompanied by interrogatories which have since been answered.

The Motion also requested the issuance by the Commission of subpeonas duces tecum to certain named individuals. A detailed form for such subpeonas describing the documents to be produced was appended to the Motion. In addition, the Motion requests authorization to proceed with various depositions.

Respondents object to the issuance of any subpeonas duces tecum at this time since the complainants have not as yet availed themselves of the opportunity to inspect and copy those documents to be made available for such purpose as indicated in respondents' answers to interrogatories.

It is respectfully suggested that complainants be directed to resubmit their request for subpeonas duces tecum and depositions after they have had an opportunity to examine the documents to be made available with regard to the answers to interrogatories so as to avoid unnecessary duplication of effort.

III

The Motion also requested authorization to take the depositions of named parties. Mr. Sowerwine's address is 219 E. 42nd Street, New York, NY 10017. Mr. Kole is no longer employed by the Trustee. Mr. Williams' address is 8001 Roosevelt Blvd., Philadelphia, Pennsylvania 19152. Any decision with respect to the taking of depositions should not be made until after the production and inspection of documents pursuant to the procedures previously set forth.

Wherefore, C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., respectfully requests that the Commission issue an order consolidating these proceedings for hearing and decision on a consolidated record but take no further action at this time with regard to the issuance of subpoenas duces tecum or the authorization of depositions.

Respectfully submitted,

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522 Fifth Avenue
New York, New York 10036
and
MARCUS & ANGEL
60 East 56th Street
New York, New York 10022

Co-Counsel to the Trustee

WISEHART, FRIOU & KOCH
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New York, New York 10017
and
DONELAN & CLEARY
15th Street & New York Avenue, NW
Washington, DC 20005

Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
Frank M. Buscaglia
John M. Cleary

Dated: Washington, DC
April 6, 1976

SERVICE DATE
APR 8 1976

C.I.9

#9

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC., v. REXCO, INC., AND REA EXPRESS, INC.

No. MC-C-8864

SCHNEIDER TPANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867

AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS. INC.

No. MC-C-8874

ASSOCIATED TRUCK LINES, INC., ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)[1]

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR DISMISSAL OF APPLICATION

No., MC-66562 (Sub-No. 2308TA)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR CANCELLATION OF TEMPORARY AUTHORITY

PRESENT: Rupert L. Murphy, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of Artim Transportation System, Inc., filed December 12, 1975, for leave to intervene in No. MC-C-8862 as a complainant;

(2) Motion of complainant in No. MC-C-8867, filed February 2, 1976, for expedited handling;

(3) Joint petition of complainants in Nos. MC-C-8862, MC-C-8864, and MC-C-8874, filed February 9, 1976, (a) for consolidation; (b) for issuance of an order directing Mr. C. Orvis Sowerwine, trustee in bankruptcy of REA Express, Inc., Mr. Tom Kole, president of REA Express, Inc., and Mr. Donald Williams, manager of the REXCO division of REA Express, Inc., to produce and permit complainants to inspect and copy specified documents;[2] and (c) for issuance of an order to take the depositions of Mr. Sowerwine, Mr. Kole, and Mr. Williams;

---

1 The application of REA Express, Inc., in No. MC-66562 (Sub-No. 2314) was included as Part No. 181 of the proceeding instituted January 8, 1976, in No. MC-66562 (Sub-No. 2345), consolidating 193 of the applications of REA Express, Inc.

2 While complainants formally plead for issuance of subpoenas duces tecum (to compel witnesses to produce documentary evidence), pursuant to Rule 56 of the Commission's General Rules of Practice (49 CFR 1100.56), it appears that the nature of the relief sought is discovery (production of documents for inspection and copying), pursuant to Rule 66 of the Commission's General Rules of Practice (49 CFR 1100.66), and therefore, complainants' request is being treated as one for discovery.

and good cause appearing therefor:

It is ordered, That the above-entitled proceedings be, and they are hereby, designated for handling on a consolidated basis.

It is further ordered, That Artim Transportation System, Inc., be, and it is hereby, permitted to intervene in No. MC-C-8862 as a complainant and to appear and participate in all further proceedings therein.

It is further ordered, That defendants REA Express, Inc., and REXCO, Inc.,[3] be, and they are hereby, directed to make available for inspection and copying to counsel for complainants in Nos. MC-C-8862, MC-C-8864, and MC-C-8874, at the offices of Wisehart, Friou & Koch, special counsel to the trustee in bankruptcy of REA Express, Inc., 219 East 42nd Street, New York, N.Y., the documents set forth in the appendix to this order.

It is further ordered, That said documents shall be made available for inspection and copying upon one week's written notification to defendants, between April 15, 1976, and May 14, 1976.

It is further ordered, That the petition in (3) above, except to the extent granted herein, be, and it is hereby, denied, for the reason that it fails to specify with the particularity required by Rules 58(b) and 66(b) of the Commission's General Rules of Practice [49 CFR 1100.58(b) and 1100.66(b)]. Such action is without prejudice to a renewal by complainants of the request for issuance of an order to take depositions, after complainants have had an opportunity to inspect and copy the documents specified in the appendix to this order.

Dated at Washington, D.C., this 5th day of April, 1976.

By the Commission, Commissioner Murphy.

ROBERT L. OSWALD,
Secretary.

(SEAL)

---

[3] By their representatives, Messrs. Sowerwine, Kole, and Williams.

APPENDIX

(1) All documents, contracts or agreements which reflect the terms, conditions, instructions and arrangements which Rexco has with owner-operators, and all other persons, engaged in the movement of goods in interstate commerce, including, but not limited to, the following:

(a) All instructions issued by Rexco concerning the routes to be traversed in the performance of movements;

(b) All instructions issued by Rexco concerning the solicitation of shipments;

(c) All instructions issued by Rexco concerning the commodities to be transported;

(d) All documents which relate to the inspection and maintenance of vehicles and compliance with the safety rules and regulations of the Interstate Commerce Commission and the Department of Transportation;

(e) All instructions issued by Rexco concerning the points to be served;

(f) All documents concerned with compensation by Rexco; and

(g) All instructions concerning the maintenance of drivers' logs.

(2) All documents, contracts or agreements which reflect the terms, conditions, instructions and arrangements which Rexco has with brokers, and all other persons engaged in the solicitation of shipments to be moved in interstate commerce including, but not limited to, the following:

(a) All instructions issued by Rexco concerning the commodities to be transported;

(b) All instructions issued by Rexco concerning the points at which shipments may be solicited;

(c) All documents concerned with compensation by Rexco; and

(d) All instructions issued by Rexco concerning the scope and interpretation of the certificates of public convenience and necessity held by REA Express, Inc.

(3) All records, statements, documents, or other writing showing the expenses incurred to date by, or on behalf of, Rexco in connection with the transportation of shipments in interstate commerce, showing among other matters the source of the funds and the parties charged with the responsibility for their payment.

(4) All records, statements, documents, brochures, sales brochures or other writings which explain the type of service to be rendered by Rexco in connection with the transportation of shipments in interstate commerce.

(5) All records, statements and documents, whether in the possession of REA Express, its Trustee in Bankruptcy, or Rexco, relative to the expenditures by any corporation or individual associated with REA Express, Inc. for the establishment of the Rexco division.

CI 10
ORIGINAL

SERVICE DATE
APR 27 1976

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of April , 1976.

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC., ET AL.

No. MC-C-8864
SCHNEIDER TRANSPORTATION, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. v. REA EXPRESS, INC.

Upon consideration of the record in each of the above-entitled proceedings, and good cause appearing therefor:

It is ordered, That the Bureau of Enforcement be, and it is hereby, directed to participate as a party in each of the above-entitled proceedings, for the purpose of developing the record.

By the Commission.

ROBERT L. OSWALD
Secretary

(SEAL)

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CI 11

Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC, ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

INTERROGATORIES

By: Richard H. Streeter
John W. Bryant
Daniel C. Sullivan
Todd A. Peterman
Attorneys for Complainants

OF COUNSEL:

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15th & H Streets, N.W.
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EAMES, PETRILLO AND WILCOX
900 Guardian Building
Detroit, Michigan 48226

SINGER & SULLIVAN
327 South LaSalle Street
Chicago, Illinois 60604

AMERICAN TRUCKING ASSOCIATIONS,
INC.
1616 P Street, N.W.
Washington, D. C. 20036

May 19, 1976

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Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

INTERROGATORIES

By this document, complainants hereby serve on REA Express, Inc. and Rexco A Division of REA Express, Inc., pursuant to Rule 62 of the General Rules of Practice of the Interstate Commerce Commission, 49 C.F.R. §1100.62, the following interrogatories to be answered by its officers, separately and under oath, within 15 days of the service thereof. These interrogatories shall be deemed continuing, and if additional information is obtained indicating that an incorrect or incomplete answer has been given to any of these interrogatories, a corrected answer shall thereafter immediately be served on complainants' attorneys.

I.

Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to serve the following points in interstate commerce:

(1) Huguenot, New York
(2) Elverson, Pennsylvania
(3) Fenwick, West Virginia
(4) Stephens City, Virginia
(5) Trumbauersville, Pennsylvania
(6) New London, Texas

II.

Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to conduct regular route operations traversing Interstate Highway 80 between Youngstown, Ohio, and Milton, Pennsylvania, in interstate commerce.

III.

Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary

authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to (1) conduct regular route operations traversing Interstate Highway 80N between The Dalles, Oregon and the junction of Oregon Highway 207 (approximately 27 miles west of Pendleton, Oregon); and (2) regular route operations traversing Interstate Highway 80N between Pendleton, Oregon, and Ontario, Oregon.

IV.

Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to conduct regular route operations traversing U.S. Highway 30 and Interstate Highway 15 between Cokeville, Wyoming, and Pocatello, Idaho.

V.

Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate

Commerce Commission which permit REA Express, Inc. to serve El Paso, Texas, in interstate commerce, other than the following: MC-66562, Sub-Nos. 2141 TA, 2281 TA and 2308 TA.

Respectfully submitted,

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May 19, 1976

CI 14

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC., ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REQUEST FOR IMMEDIATE ORAL HEARING

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Dated: June 7, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC., ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub No. 2345) (Part No. 181)
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INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REQUEST FOR IMMEDIATE ORAL HEARING

NOW COME complainants in the above-captioned proceedings and hereby request that these matters immediately be set for oral hearing at Washington, D.C. at the earliest possible date. Complainants have developed substantial and conclusive evidence that defendant, REA Express, Inc. (REA), is engaged in a completely unlawful operation, in total derogation of the terms of its Certificates from this Commission. Such operation is rapidly expanding and diverting traffic from numerous motor common carriers, including the carrier complainants herein. Accordingly, complainants request that this matter be assigned for hearing at the

earliest possible date, preferably beginning June 28, 1976, but in no circumstances beginning later than July 12, 1976.

The matters to be developed at oral hearing are those set forth in the complaints and petition herein, namely that REA's Rexco division has been operating far beyond the scope of the permanent and temporary authorities issued to REA, and that the service contemplated in the so-called "hub" applications of REA has long since been abandoned. The underlying authorities of REA are limited to so-called "express service" over specifically defined regular routes. However, complainants will present evidence to show that the entire Rexco operation has been an irregular route, call-on-demand, truckload operation, and has in no way been an "express service" as defined and required by the Commission.[1] Complainants will also show that Rexco has in no way confined its operations to REA's authorized regular routes, serving numerous unauthorized points and disregarding required routes and gateways. Furthermore, complainants will show that this unlawful Rexco service is expanding rapidly throughout the length and breadth of the United States and is diverting millions of dollars worth of traffic from presently certificated common carriers operating throughout this area.

Because of the continuation and rapid expansion of the unlawful Rexco operations, these matters must be assigned for an immediate hearing. Under procedures and a time schedule set

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[1] Transportation Activities of Arrowhead Freight Lines, 63 M.C.C. 573; Railway Express Agency, Inc., Extension - Nashua, N.H., 91 M.C.C. 311; REA Express, Inc., Application for ETA, 117 M.C.C. 80.

forth in an Order of Commissioner Murphy herein, complainants have conducted an extensive examination of Rexco's traffic records to develop their evidence in this matter, completing such examination May 19, 1976.[2] However, during the time required to institute these proceedings and develop evidence, the operations of Rexco have mushroomed. From a starting point of virtually no traffic in the fall of 1975, Rexco has expanded into an operation which now earns one million dollars in freight revenues in a single month. In merely a two-month time span between January and March, 1976, Rexco expanded its level of operation from 94 shipments per week to 240 shipments per week. An even greater expansion has occurred since. With every day that goes by, the Rexco operation grows larger and larger, and more and more traffic is unlawfully diverted from the operations of existing certificated carriers. The complainant carriers have scores of examples of recent diversions of traffic from their lines to the operations of Rexco. Under these circumstances, it is imperative that the Commission assign these matters for oral hearing at the earliest possible date. Complainants specifically request that hearing be set beginning June 28, 1976. However, they urgently maintain that under no circumstances should the opening of a hearing be delayed beyond the week of July 12, 1976.

At hearing, complainants intend to call approximately fifteen witnesses. One of these witnesses will sponsor a comprehensive traffic study of the Rexco operation. Other witnesses

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[2]Certain interrogatories concerning REA's authority to serve particular named points and routes remain to be answered.

will be called to present further testimony as to Rexco's manner of providing service, while still other witnesses will demonstrate the impact of the Rexco operation on motor common carriers. Complainants estimate that their direct case can be presented in less than one week. However, they ask that two weeks of hearing be assigned in order to allow time for any rebuttal evidence of defendant and to generally ensure prompt conclusion of this matter. In addition, complainants further request that an Administrative Law Judge immediately be designated for these proceedings, to rule on procedural or administrative matters arising prior to hearing.

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AMERICAN TRUCKING ASSOCIATIONS, INC.
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Washington, D.C. 20036

CI 15

Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. AND
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 T.A.)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

MOTION SEEKING THE HOLDING IN ABEYANCE
OF ANY APPLICATION FILED UNDER SECTION 210a(b)
SEEKING APPROVAL OF THE COMMISSION TO CONTROL,
PURCHASE, LEASE, MANAGE OR OPERATE THE AUTHORITIES
HELD BY REA EXPRESS, INC. PENDING THE COMMISSION'S
DETERMINATION OF THE ABOVE COMPLAINT PROCEEDINGS AND
THE IMMEDIATE REVOCATION OF ALL OUTSTANDING TEMPORARY
AUTHORITIES HELD BY REA EXPRESS, INC.

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June 8, 1976

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Before the
INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. AND
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
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MOTION SEEKING THE HOLDING IN ABEYANCE
OF ANY APPLICATION FILED UNDER SECTION 210a(b)
SEEKING APPROVAL OF THE COMMISSION TO CONTROL,
PURCHASE, LEASE, MANAGE OR OPERATE THE AUTHORITIES
HELD BY REA EXPRESS, INC. PENDING THE COMMISSION'S
DETERMINATION OF THE ABOVE COMPLAINT PROCEEDINGS AND
THE IMMEDIATE REVOCATION OF ALL OUTSTANDING TEMPORARY
AUTHORITIES HELD BY REA EXPRESS, INC.

NOW COME Complainants in the above-entitled proceedings and respectfully request the Commission, pursuant to Rule 102 of the Rules of Practice, 49 C.F.R. Sec. 1100.102, to hold in abeyance or summarily deny any application filed under Section 210a(b) of the Interstate Commerce Act seeking approval of the Commission to control, purchase, lease,

manage or otherwise take over or to operate under the authorities, temporary or permanent, issued to REA Express, Inc. (hereinafter REA) in Docket MC-66562 pending its determination of the issues involved in the instant proceedings. Petitioners further request the Commission to revoke the temporary authorities held by REA. In support thereof, Complainants state as follows:

By their complaints filed in November and December 1975, Petitioners have raised serious questions regarding the legality of the operation being conducted by REA through its Rexco Division. It is Complainants' belief, based on their lengthy discovery, that Rexco's operations are violative of the ICA and the Commission's rules and regulations in that they are not "express operations, and they exceed the scope of REA's authority." Repetitive violations of safety regulations of DOT also appear probable from our discovery. Petitioners have asked the Commission to set their complaint proceedings for immediate oral hearing at Washington, D. C.

At the same time, Complainants have been made aware that Federal Judge Galgay, who is overseeing the bankruptcy of REA, has scheduled a June 23, 1976 hearing on plans to sell REA's operating rights to, among others, Alltrans Express-USA (hereinafter Alltrans), and REAEMCO, two of the parties seeking to acquire such rights. As Complainants

understand Alltrans' proposal, it would lease REA's rights for ten years, and conduct operations under REA's temporary authority while seeking permanent authority from the Commission. REAMCO, on the other hand, would acquire the rights and use local cartage companies for pickup and delivery service and use Rexco and the railroads for line hauls. (Traffic World, May 31, 1976, p. 13).

It is Petitioners' position that the Commission's Order of November 28, 1975 correctly determined that temporary authorities are not transferable under the Interstate Commerce Act. This decision should be strictly adhered to. A lease under which any operations purportedly conducted under REA's nontransferable authorities are effectively transferred to another would be pure subterfuge, a different way of skinning the cat. The net effect will be to permit a transfer of authority to operate under such temporary authority and a recognition of "transferability" where there is nothing legally to transfer. It would establish a precedent which sould permit the effective transfer of temporary authorities to a person who could not make the necessary showing required by the Act in his own name. A coach and four would be driven through the Commission's power of enforcement. Any habitual violator could lease his rights and operation to a third party and escape the consequences of his violations. It is also Complainants' position that to permit any purchaser of

REA to substitute itself as applicant in the permanent application proceedings which have not been prosecuted despite their pendency for several years would be to render meaningless the Commission's Order of November 28. In this respect, it should be noted that the temporary authorities held by REA are up to fifteen years old--Sub-No. 1791 T.A. was served June 7, 1961. The "Hub" temporary authority, which is REA's only nat onwide operating configuration, is eight years old. Already the term "temporary" has been stretched beyond all reason.

Also, Petitioners call the Commission's attention to the fact that the grant of these temporary authorities was premised on the Commission's finding that an immediate and urgent need existed for REA's service which no other carrier's service was capable of meeting. While this may have been true when REA was engaged in the transportation of small, unusual and valuable shipments requiring expedited service unavailable from other carriers, it is not so now that REA's only remaining service is limited to the transportation of only truckload movements of non-express commodities.

Indeed, with the filing of the embargo on all traffic, except that hauled by its Rexco Division, with the Bankruptcy Court, the cancellation of all tariffs governing the movement of small shipments (the Rexco tariff requires at least a 16,000 pound minimum), the closing of all REA terminals

and the subsequent liquidation of the former REA transportation equipment and properties, REA can no longer satisfy the requirement that it is able to provide "express" transportation for which there is an "immediate and urgent need."

It is Complainants' position that these facts are not in dispute. The Commission may therefore take official notice of their existence and rule as a matter of law that REA's operation cannot satisfy the statutory criteria of Section 210a(a), and, therefore, no justifiable reason exists for their perpetuation. See Embargo Notice No. 1 issued November 7, 1975; Amendment No. 1 to Embargo Notice No. 1 issued November 10, 1975; Commodity Tariff 85 I.C.C. 153; and the Answers to Interrogatories Submitted on Behalf of Rexco, Inc. and REA Express, Inc., Answers VI and VII. The Commission may also take note of the repeated statements made in REA's applications seeking temporary authority that it considered itself to be a small shipment carrier and that its primary function was "to maintain and operate its transportation plant for the maximum accommodation of small shipments" (Emphasis in original). See Application in MC-66562 (Sub-No. 2308 T.A.) (the "Hub" application) at p. 2. *

*That the Interstate Commerce Commission may take "official notice" of facts that are not even of record in making its decision is well settled. See, e.g., United States v. Pierce Auto Freight Lines, 327 U.S. 525, 529-530 (1946); and Riss & Co. v. United States, 117 F. Supp. 296, 304 (W.D. Mo. 1952), aff'd 346 U.S. 890 (1953).

In short, not only has REA's service lost whatever uniqueness it once exhibited, but its authorities have been used as a subterfuge to invade illegally a field of service far removed from that authorized by the Commission. Therefore, the Commission may under Section 210a(a) properly find, without hearing, based on the facts set forth above that REA is not providing and cannot now provide the express service for which it represented there was an immediate and urgent need in order to obtain its outstanding temporary authorities. Good cause therefore exists for the immediate revocation of all outstanding temporary authorities issued to REA.

In conclusion, Complainants have raised serious questions concerning the scope of operations that may be lawfully performed under REA's "express" certificates. These questions should be resolved promptly in order to protect the interests of all parties concerned, including those having pro ls before the Court to acquire REA's operating authorities In view of the critical importance of these questions to each of the concerned interests, the Commission should not permit the direct or indirect transfer of those authorities prior to resolution of the issues in these proceedings.* Complainants should not be forced to compete with

*Any application for lease or other transfer or use of REA's operating authority should be designated for hearing with Complainants as parties.

a new, uncertificated entity that in all likelihood will expand the illegal operations of Rexco. Complaints of repeated violations of the Act and rules and regulations of the Commission and DOT should not be swept under the rug and an ingenious device for harvesting a profit from alleged illegal operations thereby condoned.

To avoid such unfair and mischievous results, it is respectfully requested that the Commission revoke and suspend the outstanding temporary authorities held by REA and also advise the Bankruptcy Court and all concerned parties that any application to purchase, lease, control or otherwise transfer REA's remaining rights or operations, including those of Rexco, will be held in abeyance pending the outcome of the complaint case.

Petitioners state that the relief sought is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Respectfully submitted,

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June 8, 1976

CI 19

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC., ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub No. 2345) (Part No. 1181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REPLY OF REA EXPRESS, INC. TO (1) REQUEST FOR IMMEDIATE ORAL HEARING AND (2) MOTION SEEKING THE HOLDING IN ABEYANCE OF ANY APPLICATION FILED UNDER SECTION 210a(b), ETC, AND OTHER RELIEF

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Dated: June 18, 1976

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
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No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REPLY OF REA EXPRESS, INC. TO (1) REQUEST FOR IMMEDIATE ORAL HEARING AND (2) MOTION SEEKING THE HOLDING IN ABEYANCE OF ANY APPLICATION FILED UNDER SECTION 210a(b), ETC, AND OTHER RELIEF

Comes now C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., and REXCO, a division of REA Express, Inc. (hereinafter REA or REXCO), and hereby replies to (1) the Request for Immediate Oral Hearing (hereinafter Request), dated June 7, 1976, and (2) the Motion Seeking the Holding in Abeyance of Any Application Filed Under Section 210a(b), etc. and Other Relief (hereinafter Motion), dated June 8, 1976."* It is the emphatic position of these

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* By separate Reply in Docket No. MC-C-8862 being filed concurrently herewith, REA and REXCO object to the petitions for intervention filed May 31, 1976 by Kaplan (Continued)

replicants, for the reasons hereafter stated, that the complainants' Request and Motion should be denied forthwith.

I.

At the outset it is appropriate to observe that the complainants' Request and Motion herein rely upon totally self-serving assertions of fact and conclusions of law. Moreover, the complainants presume to answer questions which are properly within the province of this Commission to decide, following hearing in accordance with established procedures and the development of a complete record. For example, the Request asserts that complainants have developed "substantial and conclusive evidence" of "completely unlawful operations." (Request, page 1) Similarly, in their Motion, pages 4-6, complainants take it upon themselves to advance certain "facts" as not being in dispute, and based upon these "facts", to postulate certain conclusions of law, all in derogation of the Commission's role in these proceedings.

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* (Continued) Trucking Company and George Transfer & Rigging Co., Inc., on the grounds (1) that said petitions are not timely since discovery and other procedural steps have been undertaken and are going forward and to add new parties at this time would merely result in delay if they are to take any active part in the development of the record and, (2) said parties are both attempting to broaden the issues by injecting the issue of whether or not REXCO's rates are below variable costs. It is noted, therefore, that these two petitions for leave to intervene at this late date are totally inconsistent with the relief requested in the Request and Motion, to which this reply is directed.

The complainants have likewise endeavored to convey a sense of extreme urgency in this case. Thus, the complainants have requested that this Commission "summarily deny" applications which may be filed and have asked for "immediate" revocation of outstanding temporary authorities and "immediate" oral hearings. They have seen fit to employ such terminology as "subterfuge" (Motion, page 6), "ingenious device for harvesting a profit" (Id., page 7) and "unfair and mischievous results." (Id.). REXCO and REA submit that this Commission should not be pressured through the use of such tactics to act precipitously in this important matter.

Quite the contrary, the Commission, as the guardian of the public interest, should proceed at a reasonable and measured pace to insure that an adequate record is developed and that procedural due process and substantive due process are accorded to all interested parties.*

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* If the complainants really believe that the respondents' actions represent patent violations of the Interstate Commerce Act, their relief lies with the federal district courts, not with this Commission. Section 222(b)(2) of the Interstate Commerce Act, 49 U.S.C. §322(b)(2), gives the complainants the right to go to federal district court to seek relief from "clear and patent" violations of Sections 203(c) and 206 of the Act, 49 U.S.C. §§303(c) and 306. Section 222(b)(2) has been implemented in the past in Baggett Transportation Company v. Hughes Transportation, Inc., 393 F. 2d 710 (8th Cir. 1968), cert. denied, 393 U.S. 936; Tri-State Motor Transit Co. v. International Transport, Inc., 479 F. 2d 171 (8th Cir. 1973); Tri-State Motor Transit, Co. v. Leonard Trucking Co., Inc., 347 F. Supp. 872 (W.D. Mo. 1972); and Tri-State Motor Trans. Co. v. H.J. Jefferies Truck Lines, Inc., 347 F. Supp. 864 (W.D. Mo. 1972).

The Commission and the entire transportation world known since late May 1976 that a hearing is scheduled before the bankruptcy court in New York City on June 23, 1976 in order to permit the bankruptcy court to determine whether or not the operating authorities of REA bankrupt could and should be sold to Alltrans U.S.A., REAEMCO or any other interested bidder. It is the obligation of both the bankruptcy court and the trustee in bankruptcy to dispose of the assets of the bankrupt estates in a manner consistent with the public interest which will maximize the assets of the estates for the benefit of the bankrupt creditors and take into account the interest of the public at large. It is possible that at this hearing approval of the successful bidder by the court could result in the continuation of nationwide express service to the benefit of the shipping public.

II.

In asking the Commission to "summarily deny" any application which may be filed under Section 210a(b) of the Interstate Commerce Act, and to "immediately revoke" the temporary authorities held by REA, as well as in seeking to depart from the normal procedural time-frame involved in important proceedings of this nature, the complainants are,

in effect, attempting to deny REA due process of law. Indeed, REA submits that the complainants' activities border on an abuse of the Commission's process, in that the complainants have mounted a campaign which, in effect, seeks to deprive REA of meaningful access to this Commission as an administrative tribunal.*

As pointed out supra complainants' petitions for intervention seek to expand ongoing and almost completed discovery proceedings and interject not only new parties but new issues into those proceedings. Complainants' Request for immediate oral hearing is inconsistent with the two requests for leave to intervene. Both the petitions for intervention and the Request for immediate hearing are inconsistent with the Motion to hold in abeyance any applications seeking approval of the sale of REA's operating authorities. Each is inconsistent with the other. The Motion and the Request are designed to usurp the functions and powers of the Commission and deny REA due process of

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* While the Supreme Court of the United States has held that the antitrust laws do not prohibit group action in utilizing the channels and procedures of federal agencies and courts to advocate a course or point of view with respect to business and economic interests vis-a-vis competitors, such actions were not without limits. As the Supreme Court stated in Eastern R.R. Conference v. Noerr Motor Freight, 363 U.S. 127, 144 (1961), there may be instances where group action ". . .is a mere sham to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor and the application of the Sherman Act would be justified." See also, California Motor Transport v. Trucking Unlimited, 404 U.S. 508, 511-513 (1972).

law. Moreover, the Commission's Bureau of Enforcement, as a party to these proceedings, is required to advise a party as to the charges it intends to prove against it, if any, and to give that party a reasonable opportunity to meet the charges which it faces. The Request and the Motion deny REA an opportunity to be presented with charges against it or to have any time to meet those charges.

With respect to the complainants' request "to hold in abeyance" any application filed under Section 210a(b) of the Act, we must point out that, while the Commission has discretion in determining when and whether to stay application proceedings pending a fitness investigation involving a carrier, such discretion on the part of the Commission is not unfettered and should be exercised only under compelling circumstances. Cf. Memorandum of Decision and Judgment of the United States District Court for the Northern District of Indiana (Fort Wayne Division) in Civil No. F 75-31, North American Van Lines, Inc. v. United States of America and Interstate Commerce Commission, entered April 20, 1976, Sheets 24-25. See also, North American Van Lines v. I.C.C., 386 F. Supp. 665, 675-677 (N.D. Ind. 1974). In the instant matter, REA submits that the complainants have not demonstrated, and indeed cannot demonstrate, a need or justification for holding in abeyance any applications

which may be filed with the Commission with respect to the transfer and/or control of REA's authorities.

III.

With respect to the complainants' assertions at pages 2-3 of their Motion concerning the Alltrans Express - U.S.A. and the REAEMCO proposals, REA would merely observe that at this point it is impossible to tell which proposal, if any, will be approved by the bankruptcy court and what the terms and conditions of such approval might be.* It is equally impossible to determine at this juncture what ultimate operations might evolve under REA's rights, including operations of the REXCO division.

In short, the concern of the complainants are at best premature and may, in fact, become moot.

The relief requested by the complainants in their Motion and Request would appear to be totally adverse to the public interest in that said relief, if granted, would go a long way to preventing the continuation of a nationwide express service. The complainants' efforts herein are punitive in nature and totally at odds with the efforts of the Trustee in Bankruptcy of REA in attempting to

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* As indicated above, it is entirely possible that additional proposals will be submitted by other interested bidders at the June 23, 1976 hearing before the bankruptcy court.

transfer REA's underlying authority to a strong, viable entity for the first time in REA's history. The ultimate question is whether or not a nationwide express service will continue in this country; a question of profound importance to all parties concerned, including the shipping public.

Complainants would frustrate the ongoing New York Bankruptcy Court procedures and deny REA any due process of law in connection with complainants' unproved charges. The net effect of complainants' Petition, Motion and Request, wherein they are acting as complainants, judge and jury - supplanting the Commission itself, is to deny and adjudication after hearing on the merits and to do so before the objective facts, including those to be made known after the June 23, 1976 Court hearing, upon which the merits can be decided, have been determined.

WHEREFORE, C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., respectfully requests that for the reasons above stated that the complainants' Request and Motion be denied forthwith.

Respectfully submitted,

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and
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Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Dated: June 18, 1976

SERVICE DATE
JUN 21 1976

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ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC., v. REXCO, INC., AND REA EXPRESS, INC.

PRESENT: Rupert L. Murphy, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of Kaplan Trucking Company, filed June 1, 1976, for leave to intervene;

(2) Petition of George Transfer & Rigging Co., Inc., filed June 1, 1976, for leave to intervene;

and good cause appearing therefor:

It is ordered, That petitioners be, and they are hereby, permitted to intervene in support of the complaint and to to appear and participate in all further proceedings therein.

Dated at Washington, D. C., this 11th day of June, 1976.

By the Commission, Commissioner Murphy.

ROBERT L. OSWALD,
Secretary.

(SEAL)

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BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. Mc-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

ANSWER TO INTERROGATORIES OF MAY 19, 1976

Respectfully submitted,

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Special Counsel to the Trustee

Dated: June 21, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
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No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. Mc-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

No. MC-66562 (Sub No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

ANSWER TO INTERROGATORIES OF MAY 19, 1976

C. Orvis Sowerwine, Trustee in Bankruptcy for REA Express, Inc., on behalf of REA Express, Inc. and its REXCO division submits the following in response to the interrogatories dated May 19, 1976. First, the Trustee wishes to state that his ability at this time to respond in full with complete answers to all interrogatories is limited by the absence of personnel to expend the time necessary in such an effort, the fact that individuals involved in establishing the questioned operations in

accordance with applicable law are no longer employed by REA or the Trustee, that REA's offices were moved on May 17, 1976 with the attendant difficulty in locating corporate records, including those of a regulatory nature.

The Trustee further points out that the interrogatories regarding the presence of existing motor carrier operating authorities are premised o. an unproven assumption: that REA Express, Inc., as an express company, must have motor carrier operating authority in its own name for all transportation of express shipments by motor vehicle on public highways in interstate or foreign commerce.

Without admitting that any present inability to find particular motor carrier certificates of public convenience and necessity, temporary authorities, emergency temporary authorities, issued and/or approved by the Interstate Commerce Commission authorizing the specified operations by REA Express, Inc. and its REXCO division indicates any absence of requisite authority under the law, the Trustee responds as follows to the interrogatories.

I.

Interrogatory No. 1: Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to serve the following points in interstate commerce:

(1) Huguenot, New York
(2) Elverson, Pennsylvania
(3) Fenwick, West Virginia
(4) Stephens City, Virginia
(5) Trumbauersville, Pennsylvania
(6) New London, Texas

Response: As to service at the specified points:

(1) Huguenot, New York: This point is listed in the "New York Service Guide Point List Naming Cities, Towns and Communities", issued June 1973 by REA Express on original page 15 with a "block identification" number assigned "0952 A," with Ardsley, New York named as the location where traffic is held or received when pickup & delivery is not provided.

In this connection the "Service Guide Point List" is a compilation maintained in the ordinary course of business by REA Express listing, by state, all cities, towns or communities served by REA Express and as compiled from the "Joint Directory of Express Offices", I.C.C. Tariff No. A-3 (Railway Express Agency, Incorporated, Series); and from the "Joint Directory of Pickup and Delivery Limits at Express Offices", I.C.C. No. A-4 (Railway Express Agency, Incorporated, Series), copies of which tariffs are on file at the offices of the Interstate Commerce Commission in Washington, D.C.

(2) Elverson, Pennsylvania: This point is listed in the "Pennsylvania Service Guide Point List Naming Cities, Towns and Communities" issued by REA Express in June 1973,

original page 11 and listed as "block identification" number "0950 G" with Reading, Pennsylvania listed as the location where traffic is held or received when pickup & delivery is not provided.

(3) Fenwick, West Virginia: This point is listed in "West Virginia Service Guide Point List Naming Cities, Towns and Communities" issued August 1973 by REA Express, original page 7, with the "block identification" number "1145 K", and Cowen, West Virginia listed as the location where traffic is held or received when pickup and delivery not provided.

(4) Stephens City, Virginia: This point is listed in the "Virginia Service Guide Point List Naming Cities, Towns and Communities" served by REA Express, undated, original page 17, "block identification" number "1047 Q", with Winchester, Virginia listed as the location where traffic is held or received when pickup & delivery not provided.

(5) Trumbauersville, Pennsylvania: This point is listed in "Pennsylvania Service Guide Point List Naming Cities, Towns and Communities", issued June 1973 by REA Express, original page 36, "block identification" number "0950 E", Doylestown, Pennsylvania listed as the location where traffic is held or received when pickup & delivery not provided.

(6) New London, Texas: This point is listed in "Texas Service Guide Point List Naming Cities, Towns and Communities", issued April 1974 by REA Express, original

page 22, "block identification" number "1730 L," Tyler, Texas named as a location where traffic held or received when pickup & delivery not provided.

II.

Interrogatory No. 2: Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to conduct regular route operations traversing Interstate Highway 80 between Youngstown, Ohio, and Milton, Pennsylvania, in interstate commerce.

Response: Youngstown, Ohio is a point listed in the "Ohio Service Guide Point List Naming Cities, Towns and Communities" served by REA Express, issued August 1973, original page 24, "block identification" number "0845 O", Youngstown, itself being named as the terminal providing pickup & delivery service. Milton, Pennsylvania is listed in "Pennsylvania Service Guide Point List Naming Cities, Towns and Communities" issued June 1973 by REA Express, original page 23, "block identification" number "0949 I", Harrisburg, Pennsylvania listed as the terminal providing pickup & delivery service. REA's over-the-road authority is

contained in the "HUB" case, Sub No. 2308-TA which has been indefinitely extended by Sub No. 2314 (1968), Sub No. 2314 being the corresponding permanent authority application.

REA is not subject to the Ex Parte No. MC-37 Motor Carrier Terminal Areas. REA may define its "Express Terminal Areas" in tariff publications filed with the Commission. Ex Parte No. 242, Express Company Terminal Area, 332 I.C.C. 91, 118 (1967). Railway Express Agency, Inc. Tariff I.C.C. A-4, "Joint Directory of Collection and Delivery Limits at Express Stations", sets forth the description of REA's Terminal Areas.

III.

Interrogatory No. 3: Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to (1) conduct regular route operations traversing Interstate Highway 80N between The Dalles, Oregon and the junction of Oregon Highway 207 (approximately 27 miles west of Pendleton, Oregon); and (2) regular route operations traversing Interstate Highway 80N between Pendleton, Oregon, and Ontario, Oregon.

Response: The Dalles, Oregon is listed in the "Oregon Service Guide Point List Naming Cities, Towns and Communities," issued November 1972 by REA Express, on original page 8.

The "block identification" number is "0404 H", with the Dalles itself listed as the terminal providing pickup & delivery service.

Pendleton, Oregon is listed in the "Oregon Service Guide Point List Naming Cities, Towns and Communities" issued November 1972 by REA Express, on original page 6. The "block identification" number is "0407 E", with Pasco, Washington listed as the terminal providing pickup & delivery service.

Ontario, Oregon is also listed in the "Oregon Service Guide Point List Naming Cities, Towns and Communities" issued November 1972 by REA Express, on original page 6. The "block identification" number is "0609 H", with Boise, Idaho listed as the terminal providing pickup and delivery service.

IV.

Interrogatory No. 4: Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency tempoary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to conduct regular route operations traversing U.S. Highway 30 and Interstate Highway 15 between Cokeville, Wyoming, and Pocatello, Idaho.

Response: Cokeville, Wyoming is listed in the "Wyoming Service Guide Point List Naming Cities, Towns and Communities,"

issued November 1972 by REA Express, on original page 1. The "block identification" number of "0816 H," with Rock Springs, Wyoming listed as the location where traffic is held or received when pickup and delivery is not provided.

Pocatello, Idaho is listed in the "Idaho Service Guide Point List Naming Cities, Towns and Communities" issued November 1972 by REA Express, on original page 5. The "block identification" number is "0713 C", with Pocatello itself being named as the terminal providing pickup & delivery service.

V.

Interrogatory No. 5: Identify by sub-numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to serve El Paso, Texas, in interstate commerce, other than the following: MC-66562, Sub-Nos. 2141 TA, 2281 TA and 2308 TA.

Response: El Paso, Texas is listed in the "Texas Service Guide Point List Naming Cities, Towns and Communities" issued April 1974 by REA Express, on original page 10. The "block identification" number of "1819 C", with El Paso itself listed as the terminal providing pickup & delivery service.

Respectfully submitted,

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Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Special Counsel to the Trustee

Dated: June 21, 1976

Certificate Of Service

I hereby certify that on this 21st day of June a copy of the foregoing Answer to Interrogatories has been served upon all parties of record by mailing copies of the same to them via first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

JOHN M. CLEARY

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Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

MOTION FILED BY COMPLAINANTS SEEKING ENTRY OF AN ORDER REQUIRING A MORE COMPLETE ANSWER TO INTERROGATORIES

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AMERICAN TRUCKING ASSOCIATIONS, INC.
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June 23, 1976

Before the

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

MOTION FILED BY COMPLAINANTS SEEKING ENTRY OF AN ORDER
REQUIRING A MORE COMPLETE ANSWER TO INTERROGATORIES

On May 18, 1976, Complainants served certain Interrogatories on the above-entitled Defendants. By these Interrogatories Complainants were attempting to discover under what authority issued and/or approved by the Interstate Commerce Commission the Rexco Division of REA Express, Inc. was serving certain specified points and operating over certain specified routes. Initially Complainants asked that the Interrogatories be answered within 15 days. However, in order to ease the burden on REA's counsel, Complainants agreed to extend the date for filing answers to the Interrogatories

until June 21, 1976. On that date Complainants' counsel received the "Answer" filed by Defendants. It is Complainants' position that Defendants' answers are not responsive to the Interrogatories and must, therefore, be corrected and supplemented. In support thereof, Complainants respectfully state as follows:

I.

By Interrogatory Nos. I and V Complainants asked Defendants to identify by sub numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to serve 6 specified points in interstate commerce. In its "Answer" filed June 21, 1976, REA has not identified any such authority. Instead, repeated references are made to its "Service Guide Point List" in an apparent attempt to infer that such point list establishes its right to provide motor carrier service to the specified points. However, the "Service Guide Point List," which was maintained by REA for informational purposes only, is not an official I.C.C. publication, nor is it part of a report, order or certificate issued by the Commission. Therefore, it is not and cannot be considered a part of REA's motor carrier authority. Nor can it, by any stretch of the imagination, be used to justify motor carrier service

at any point that is not specifically named in a certificate of public convenience and necessity, temporary authority, emergency temporary authority or included in REA's "Joint Directory of Pickup and Delivery Limits at Express Offices," the so-called "A-4 Terminal Area Publication." If REA's contention were valid, it could, by simply revising its point list, begin or terminate motor carrier service at its own discretion without Commission approval. In short, not only is REA's reference to its "Service Guide Point List" not a responsive answer to the Interrogatories submitted by Complainants, but it is little more than a deliberate attempt to thwart Complainants' efforts to narrow the factual issues in this proceeding through use of the Commission's discovery procedures.

II.

By Interrogatory Nos. II, III and IV Complainants asked Defendants to identify by sub numbers and date issued all certificates of public convenience and necessity, temporary authorities, emergency temporary authorities and any other authorities issued and/or approved by the Interstate Commerce Commission which permit REA Express, Inc. to conduct regular-route operations traversing specified highways. In their response, Defendants fail to identify any such authorities, but instead, with one exception, simply refer to

the "Service Guide Point List" as allegedly authorizing them to serve the specified points.

With respect to Interrogatory No. II, the Defendants contend that the "Hub authority," Sub-No. 2308 TA, authorizes REA to operate over Interstate 80 between Youngstown, Ohio, and Milton, Pennsylvania. However, as a review of REA's application in 2308 TA will reveal, such is not the case for the simple reason that, at the time the application was filed, Interstate 80 did not exist between Milton, Pennsylvania, and Youngstown, Ohio, and was, therefore, not included by REA as a route over which regular-route operations would be conducted.

III.

It is respectfully submitted that REA has shown neither good faith nor candor in its responses which simply mock the Commission's discovery procedures. Any carrier can be expected to be able to identify within a reasonable time the authority issued and/or approved by the Interstate Commerce Commission which permits its interstate motor carrier operations. The mere reference to an unofficial publication maintained by REA for its own convenience without appropriate references to the underlying certificates, temporary authorities, emergency temporary authorities or terminal area publication does not serve to identify REA's appropriate motor carrier authority as requested

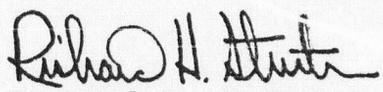
by the Interrogatories. Since these Interrogatories have been outstanding since May 19, 1976, it is requested that an order be immediately issued commanding REA Express, Inc. to give complete answers to the Interrogatories within 7 days. Should REA not have any such authority, then it should be required to so state.

Since all of the points and routes specified in Complainants' Interrogatories involve actual recent past movements by the Rexco Division of REA, the latter should have present knowledge of the authority for those movements. No responsible carrier would have made such movements without verifying the existence of appropriate authority. Accordingly, quick identification of such authority should be an easy matter. Under these circumstances 7 days is reasonable time for the production of the required information. In any case, this request for compliance should not be permitted to delay further the prompt commencement of an oral hearing as previously requested by Complainants. REA and its Rexco Division should not be permitted to benefit from any further delay occasioned by their unwillingness or inability to identify the authority under which they have already transported shipments in interstate commerce to the detriment of properly certificated motor carriers.

In conclusion, Complainants ask that the requested Order be issued immediately without awaiting a response. While administrative chaos may reign at REA,

this condition has not in any way hindered the continuing expansion of the Rexco operations which presently span the continent. Furthermore, as shown by REA's response, the expansion has erupted without any serious attempt to ascertain the scope of the official REA authorities which, under the Interstate Commerce Act, govern the extent of Rexco's operations.

Respectfully submitted,



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June 23, 1976

CI 28

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SHCNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

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AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

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ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REPLY OF REA EXPRESS TO COMPLAINANTS' MOTION SEEKING ENTRY OF ORDER REQUIRING A MORE COMPLETE ANSWER TO INTERROGATORIES

Respectfully submitted,

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Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
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John K. Maser III

Dated: July 13, 1976

95

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

REPLY OF REA EXPRESS TO COMPLAINANTS' MOTION SEEKING ENTRY OF ORDER REQUIRING A MORE COMPLETE ANSWER TO INTERROGATORIES

The Answers to Interrogatories submitted June 21, 1976 were full and complete to the best knowledge, information and belief of C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc. and the available employees of REA Express, Inc. and its REXCO division. The interrogatories are continuing so the answers will be supplemented as any additional responses are called for.

Under the circumstances an order to compel answers or require more complete answers could generate no further response than already submitted.

As complainants well knew, counsel for the Trustee were involved commencing June 23, 1976 in 7 days of hearings before the Bankruptcy Court relating to the lease, sale or other disposition of REA's surface operating authority. Those hearings were not terminated until approximately 5:30 PM on Friday July 9. As of today's date, for the foregoing reasons, it has been impossible for the Trustee or any of his counsel to supplement the answers to the interrogatories.

The motion to compel answers or requiring more complete answers should be denied.

Wherefore, REA Express respectfully requests that complainants' Motion dated June 23, 1976 be denied.

Dated at Washington, D.C. this 13th day of July, 1976.

Respectfully submitted,

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Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Dated: July 13, 1976

SERVICE DATE JUL 16 1976 CI 31

ORIGINAL

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC., AND REA EXPRESS, INC.

PRESENT: Rupert L. Murphy, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Joint petition of Red Arrow Freight Lines, Inc., Central Freight Lines, Inc., and Brown Express, Inc., filed June 16, 1976, for leave to intervene;

(2) Reply by applicant, filed June 21, 1976;

(3) Tendered pleading of Red Arrow Freight Lines, Inc., Central Freight Lines, Inc., and Brown Express, Inc., submitted for filing June 23, 1976, entitled motion to strike or otherwise answer to reply in (2) above;

(4) Joint petition of Texas Oklahoma Express, Inc., Saia Motor Freight Line, Inc., and Alamo Express, Inc., filed June 29, 1976, for leave to intervene;

and good cause appearing therefor:

It is ordered, That the tendered pleading in (3) above, be, and it is hereby, rejected, for the reasons that (1) the pleading is a reply to a reply, and (2) the Commission's General Rules of Practice (49 CFR 1100.23(a)) do not provide for the filing of said pleading.

It is further ordered, That petitioners in (1) and (4) above be, and they are hereby, permitted to intervene in said proceeding with the right to appear and participate in all further proceedings therein.

Dated at Washington, D.C., this 8th day of July, 1976.

By the Commission, Commissioner Murphy.

ROBERT L. OSWALD,
Secretary.

(SEAL)

OH

SERVICE DATE 1 C.I. 35

ORDER JUL 29 1976

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC., v. REXCO, INC., AND REA EXPRESS, INC.

No. MC-C-8864

#35

SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867

AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874

ASSOCIATED TRUCK LINES, INC., ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308TA)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR CANCELLATION OF TEMPORARY AUTHORITY

PRESENT: Rupert L. Murphy, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition by complainants filed June 7, 1976, requesting that the above-captioned proceedings immediately be set for oral hearing;

(2) Motion of complainants filed June 23, 1976, requesting issuance of an order requiring more complete answers to interrogatories;

(3) Reply by REA Express, Inc., filed July 13, 1976, to the motion in (2) above; and good cause appearing therefor:

It is ordered, That the proceedings be, and they are hereby, assigned for oral hearing at the Offices of the Interstate Commerce Commission, Washington, D.C. beginning on August 30, 1976 (length of hearing indefinite), at 9:30 a.m. local time;

It is further ordered, That defendants REA Express, Inc., and REXCO, Inc., be, and they are hereby, directed to complete answers to interrogatories Nos. 1 through V previously filed June 21, 1976, on or before August 16, 1976;

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It is further ordered, That the direct evidence and argument of the complainants, the American Trucking Associations, Inc., and of the Bureau of Enforcement shall be presented (insofar as is possible), in the form of prepared statements and exhibits, that appropriate sponsors of such statements shall be available for cross-examination, and that such materials shall be served upon the Commission and all parties by August 23, 1976;

It is further ordered, That the defendants shall be prepared to present their evidence immediately after the completion of above-noted direct presentation;

It is further ordered, That except for extraordinary cause shown, no additional procedural motions will be entertained prior to the start of the hearing and that, subject to the usual discretion of the hearing officer, the presentation of evidence otherwise shall be in accordance with the Commission's usual procedures.

Dated at Washington, D. C., this 28th day of July, 1976.

By the Commission, Commissioner Murphy.

ROBERT L. OSWALD,

Secretary.

(SEAL)

CL 37 ORIGINAL

SERVICE DATE

AUG 5 1976

ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC., AND REA EXPRESS, INC.

No. MC-C-8874

ASSOCIATED T UCK LINES, INC., ET AL
v.
REA EXPRESS, INC.

PRESENT: Rupert L. Murphy, Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the records in the above-entitled proceedings, and of:

(1) Petition of Home Transportation Company, Inc., filed July 14, 1976, for leave to intervene in No. MC-C-8862;

(2) Reply by REA Express, Inc., filed July 19, 1976, to the petition in (1) above;

(3) Petition of Southwestern Motor Transport, Inc., filed July 22, 1976, for leave to intervene;

and good cause appearing therefor:

It is ordered, That Home Transportation Company, Inc., be and it is hereby, permitted to intervene in No. MC-C-8862, with the right to appear and participate in all further proceedings therein.

It is further ordered, That petitioner in (3) above be, and it is hereby, permitted to intervene in the said proceedings with the right to appear and participate in all further proceedings therein.

Dated at Washington, D. C., this 28th of July, 1976.

By the Commission, Commissioner Murphy.

ROBERT L. OSWALD,
Secretary.

(SEAL)

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CI 39

Before the

INTERSTATE COMMERCE COMMISSION

Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. RLA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

PETITION REQUESTING AN ORDER TO TAKE THE DEPOSITION AND PERPETUATE THE TESTIMONY OF MR. DAN KERRIGAN PURSUANT TO RULE 58 OF THE COMMISSION'S RULES OF PRACTICE, 49 C.F.R. §1100.58

OF COUNSEL:

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EAMES, PETRILLO AND WILCOX
900 Guardian Building
Detroit, Michigan 48226

AMERICAN TRUCKING ASSOCIATIONS, INC.
1616 P Street, N.W.
Washington, D. C. 20036

August 10, 1976

Before the

INTERSTATE COMMERCE COMMISSION

Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

PETITION REQUESTING AN ORDER TO TAKE THE DEPOSITION AND PERPETUATE THE TESTIMONY OF MR. DAN KERRIGAN PURSUANT TO RULE 58 OF THE COMMISSION'S RULES OF PRACTICE, 49 C.F.R. §1100.58

Comes now COMPLAINANTS in the above-entitled proceedings and request the Commission to enter an Order to permit the taking of the deposition of Mr. Dan Kerrigan, whose business address is 80 Pine Street, New York, N.Y. 10005. This entry of the requested Order is required to preserve the testimony of Mr. Kerrigan who will be in Europe on business at the time of the oral hearing

in this proceeding which is scheduled to begin on August 30, 1976.

It is anticipated that Mr. Kerrigan will be able to provide the Commission with certain details concerning the operation of REA Express, Inc. More particularly, Mr. Kerrigan was the person responsible for the creation of the hub authority that was granted to REA Express, Inc. in 1968 in Commission Docket No. MC-66562 (Sub-No. 2308 TA) and which is presently pending in Commission Docket No. MC-66562 (Sub-No. 2314) or as (Sub-No. 2345, Part No. 181). Complainants will develop evidence concerning the basis of the hub concept, the manner of operation under the hub temporary authority and other related matters concerning REA Express, Inc.'s past operations. Since the revocation of the hub authority and the dismissal of the corresponding permanent authority application are to be considered in this proceeding, the evidence set forth above is relevant and material to the Commission's decision.

Mr. Kerrigan will be on vacation after August 13, 1976, and will, thereafter, immediately depart for Europe on business prior to the start of the oral hearing on August 30, 1976. It is understood that he will be absent from the United States until the middle part of September. Since he will thus be unavailable for cross-examination during the oral hearing, the taking of his deposition is the only way that his testimony can be

obtained by Complainants and presented to the Commission while preserving Respondent's right to cross-examine Complainants' witness.

Mr. Kerrigan's deposition will be taken at 2:30 p.m., August 12, 1976, at the Law Offices of Barrett, Smith, Schapiro & Simon, 26 Broadway, New York, New York 10004. The officer before whom the deposition will be taken is Ms. Betty Jane Mahoney, a duly certified court reporter, employed by the Doyle Court Reporting Service.

For all the above-stated reasons, Complainants respectfully request the Commission immediately issue a subpoena requiring Mr. Kerrigan to appear at the above-stated location at 2:30 p.m. in order that he may be deposed.

Respectfully submitted,

Richard H. Streeter

OF COUNSEL:

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704 Southern Building
Washington, D. C. 20005

SINGER & SULLIVAN
327 South LaSalle Street
Chicago, Illinois 60604

EAMES, PETRILLO AND WILCOX
900 Guardian Building
Detroit, Michigan 48226

AMERICAN TRUCKING ASSOCIATIONS, INC.
1616 P Street, N.W.
Washington, D. C. 20036

August 10, 1976

VERIFICATION

City of Washington)
) ss
District of Columbia)

Richard H. Streeter, being duly sworn, deposes and says that he has read the foregoing petition, knows the contents thereof, and that the same are true as stated.

Richard H. Streeter

Subscribed and sworn to before me, a Notary Public, in and for the said City and District this 10th day of August, 1976.

Elizabeth G. Streeter
Notary Public

(SEAL)

My Commission expires 2/14/77.

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that I have this 10th day of August, 1976 served a copy of this document, postage prepaid, properly addressed upon all known parties of record.

Richard H. Streeter

CI 40

ORIGINAL

SERVICE DATE

AUG 12 1976

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ORDER

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

PRESENT: Richard H. Beddow, Jr., Administrative Law Judge, to whom the matter which is the subject of this order has been assigned for action thereon.

Upon consideration of the records in the above-entitled proceedings and of the petition of complainants, dated August 10, 1976, requesting the taking of a deposition; and good cause appearing therefor:

It is ordered, That the petitioner be, and is hereby, permitted to take the testimony, for use as evidence in the above-entitled proceedings, of Mr. Dan Kerrigan of 80 Pine St., New York, N.Y., by deposition upon oral examination at 2:30 p.m., August 12, 1976, at the Law Offices of Barrett, Smith, Schapiro & Simon, 26 Broadway, New York, N.Y.

Dated at Washington, D.C., on this 10th day of August, 1976.

By the Commission, Richard H. Beddow, Jr., Administrative Law Judge.

ROBERT L. OSWALD.

Secretary.

(SEAL)

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C.I. 43

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO. INC. and
REA EXPRESS, INC.

#43

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

TRUSTEE'S ANSWERS, TO EXTENT POSSIBLE AS OF AUGUST 16, 1976, TO COMPLAINANTS' INTERROGATORIES NOS. I THROUGH V

Respectfully submitted,

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and
MARCUS & ANGEL
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New York, NY 10022

Co-Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

DONELAN AND CLEARY
914 Washington Building
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Washington, D.C. 20005

Dated: August 16, 1976

Special Counsel to the Trustee

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

TRUSTEE'S ANSWERS, TO EXTENT POSSIBLE AS OF AUGUST 16, 1976, TO COMPLAINANTS' INTERROGATORIES NOS. I THROUGH V

Comes now REA EXPRESS, INC., C. ORVIS SOWERWINE, TRUSTEE IN BANKRUPTCY (the Trustee), and under protest, and without waiver of any rights whatsoever, or any assignments of error on petition or appeal, arising out of the grossly prejudicial procedures and deprivation of rights to a fair hearing accomplished by the Order of the Commission, served July 29, 1976 (which, among other errors, compelled these answers), respectfully declares:

1. Under the Interstate Commerce Act, the Administrative Procedure Act, and the Commission's Rules, complainants have the burden of proof. See, e.g., Central Railroad Co. of New Jersey v. Bedway Trucking Co., 68 M.C.C. 281, 283 (1956). By subjecting the Trustee to the most oppressive and prejudicial discovery order in the Commission's history; by ordering participation of the Commission's Bureau of Enforcement to lend assistance to complainants; and especially by the Order served July 29, 1976 herein, the Commission has not only largely relieved complainants of their burden and imposed it upon the Trustee, but has prejudicially deprived the Trustee of a fair hearing. The Trustee continues his objection to Interrogatories Nos. I through V, and assigns prejudicial error to the orders requiring answer thereto and to any future finding or order predicated upon those Interrogatories or the answers thereto.

2. Other than a superficial test of the Trustee's knowledge of literally thousands of pages of complicated operating authorities, Interrogatories Nos. I through V, on their face, call exclusively for information contained in certificates of public convenience and necessity, temporary authorities and other authorities, all of which are presumably matters of public record at the Interstate Commerce Commission and equally available to complainants as to the Trustee. They are, therefor, not proper subjects

for Interrogatories under the Federal Rules. The Trustee continues his objection to Interrogatories Nos. I through V, and assigns prejudicial error to the orders requiring answers thereto, and to any order predicated thereon.

3. The Trustee is a nationwide express company, authorized to carry express freight moving between any two points in the United States, with either rail, water, or motor underlying services. In addition, there are 2,345 separate dockets at the Interstate Commerce Commission which embrace an estimated 2,000 separate motor carrier authorities of the Trustee, authorizing operations over an estimated 55,000 miles of highways, which, by common knowledge and public recognition, are substantially nationwide. The route descriptions for one of these authorities is about 6 inches thick. Additionally, the Trustee is authorized to designate his own terminal areas of service around all authorized points.

The issues in this case do not include any lawful or material issue as to whether the Trustee, with his skeletal organization and stringently limited resources, is able to name, by August 16, 1976, the specific one or more of those thousands of pieces of paper, or the specific terminal area, in which service at any particular point or operation over any particular segment of highway appears. If, as the Trustee believes to be the case the microscopic portions of

his enormous authority which are the subject of the Interrogatories are embraced by name or description in any one or more of those thousands of pieces of paper or terminal areas, it is utterly irrelevant and immaterial whether the Trustee identifies them by number and date by August 16, 1976. Any finding of unlawful operation predicated merely upon a failure of the Trustee -- or anyone else -- to so identify them by August 16, 1976 would be intrinsically defective, as a matter of law as well as a conclusion unsupported by facts. For example, subsequent identification and production of such an authority -- even in the Appellate Court -- would, on its face, not only invalidate the Commission's entire basis for such an order, but render it moot. Section 212(a) forbids deprivation of existing motor carrier authority in any such manner. The Trustee respectfully continues his objection to Interrogatories Nos. I through V on these grounds, and assigns error to the orders requiring answers thereto and to any finding based on such Interrogatories or answers thereto.

4. Interrogatories Nos. I through V, and the Commission's Order served July 29, 1976 requiring the Trustee to "complete answers" thereto by August 16, 1976, are unreasonably burdensome and prejudicial to the Trustee, and deprive him of a fair hearing, in further respects. The long-standing published Point Lists and Terminal Area Tariffs,as well as the published Directories of Offices

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and Communities served, of the bankrupt carrier now operated by the Trustee, -- some of which publications have been in effect for more than 15 years -- list an estimated 26,000 points of service. At times during the period those publications have been in effect, REA had as many as 30,000 employees,and conducted operations upon which the public relied for some $430,000,000 worth of transportation service in a year. Just prior to November 6, 1975, when REA was adjudicated a bankrupt, there were still some 8,000 REA exmployees. Under the stringent restraints imposed by the Bankruptcy Court and the limited resources available, the Trustee has, during the entire pendency of these proceedings, possessed a skeletal force of presently only 75 employees, with which to attempt: (a) to preserve the nation's only nationwide express operating authorities and service to the public by continued, interim operation of the Rexco Division, the only operations of the Bankrupt which are economically feasible for the Trustee in Bankruptcy; (b) to find, and negotiate a contract with, a successor desiring and qualified to resume and preserve the nation's only nationwide, full-spectrum, general-commodity express service for all size shipments (package, LTL, volume and truckload); (c) to preserve and protect the assets of the estate in the possession of the Trustee, and to continue the process of converting real estage and other non-operating assets of the estate into cash for the creditors; (d) to

handle all the many problems and proceedings in the Bankruptcy Court; (e) to defend against the constant harrassment by complainants and the oppressive, unfair and prejudicial procedural orders of the Commission in these proceedings; and (f) to provide the necessary assistance to Alltrans Express U.S.A., Inc., in its efforts to file applications with the Commission at the earliest possible moment for the temporary and permanent authority essentail for Alltrans to preserve this unique and valuable public service. The Commission has been kept fully informed of the Trustee's assiduous efforts in all these matters, including the Rexco operations. The Commission has been kept informed of the extended negotiations and the various proposals received by the Trustee since the filing of the interrogatories here assailed. The Commission was informed of the Trustee's thoroughly considered initial conclusion that the proposal of Alltrans Express U.S.A., Inc. offered the best prospect for preservation of full-spectrum, general express service for the entire public, rather than primary or exclusive interest in the Rexco operations. The Commission was informed of the Bankruptcy Court's Order and notices assigning the matter for public hearing. It was kept informed of the progress of the hearings over a 3-week period; of the Bankruptcy Court's Opinion and Order of July 16, 1976 approving the Alltrans Express proposal; of the intensive, day-and-night contract negotiations ex-

tending from the date of such order until the Court's Order of July 27, 1976 approving the Trustee's contract with Alltrans Express U.S.A., Inc.; of the text of the contract and the Court's Order of July 27, 1976; and of the execution of the contract that same date.

At the direction of the Trustee, copies of the contract and the Court's Order were delivered to the Commission on July 28, 1976. The Order here complained of was served the next day, July 29, 1976! Even if the Trustee had had the personnel or resources to make a search of the many thousands of pages of papers constituting the authorities, in order to assist complainants in discharging complainants' burden of proof in their attempt to obstruct and prevent the preservation of express service, he could not have possibly done so by August 16, 1976, as he and his limited staff have been fully occupied in efforts to preserve nationwide full-spectrum express service for the public. Under the circumstances -- all of them full known to the Commission -- the order served July 29, 1976, ordering the Trustee to make such a search was unreasonable, oppressive, burdensome, and prejudicial, and deprived him of a fair hearing. The Trustee respectfully asserts and preserves his assignments of error against that order, against Interrogatories Nos. I through V, and against any subsequent order that may be predicated upon same, or these answers.

5. Interrogatories Nos. I through V constitute abuse of the Commission's process, and are nothing more than harrasment of the Trustee with respect to matters which are not only intrinsically de minimis, but matters in which the carrier complainants have shown no substantial interest. The Trustee holds the largest surface carrier authority, to serve the greatest number of points of any carrier in the United States. Out of REA's 26,000 long-authorized points, including virtually every city in the United States, Interrogatory No. I demands identification of the particular, specific authorizing pieces of paper, and their dates, for 6 of the most obscure and insignificant points, none of which have been shown to be served by any complainant, only 3 of which are even significant enough to be in the 1976 Rand McNally Road Atlas; and the LARGEST of which, according to the Atlas, has a population of 802 souls! The points selected by complainants are:

	Population
Huguenot, NY	275
Elverson, PA	-
Fenwick, W. VA	400
Stephens City, VA	802
Traumbauersville, PA.	-
New London, TX	-

The Commission's process should not be demeaned to an enterprise of obvious harrassment through unreasonable, burdensome demands

on matters of no material economic significance and of no competitive substance to complainants.

In addition to the insignificance of the points embraced in Interrogatory No. I, out of an estimated 55,000 miles of authorized REA over-the-road routes -- believed to be by far the largest surface carrier operating rights in the United States -- Interrogatories Nos. II through IV, consist wholly of demands, without showing any actual competitive interest of any complainant in any of them, that the Trustee search through thousands of pages of authorities to find particular short segments of particular highways between 4 pairs of undeniable authorized points, viz.:

Youngstown, OH - Milton, PA
The Dalles, Or. - Junction Oregon Highway 207
Pendleton, OR - Ontario, OR
Cokesville, WY - Pocatello, ID

Similarly de minimis is Interrogatory No. V, which consists in its entirety of a demand for a search for every additional authority to serve El Paso in addition to 4 such authorities acknowledged in the Interrogatory!

The Trustee respectfully objects to the complainants' use of the Commission's awesome process in Interrogatories Nos. I through V(a) to harrass the Trustee in his efforts to preserve the nation's only substantial full-spectrum express service, (b) to prejudicially deprive him of a fair hearing, and (c) to impede his efforts to assist in

early filing of the forthcoming §210a(b) and §5 applications, now in joint preparation with Alltrans. He hereby reasserts and reserves his assignments of error in this respect.

6. The Trustee is informed and believes, the prima facie evidence shows, and he therefore declares, that he has (a) authority to serve each of the microscopic points named in Interrogatory No. I, (b) authority to operate over each of the highway segments named in Interrogatories Nos. II through IV in serving his authorized points, and (c) authority or combinations of authorities to serve El Paso, TX in shipments to and from substantially all points in the United States.

When REA Express, Inc. was adjudicated a bankrupt and its properties were transferred to the Trustee, on November 6, 1975, the Trustee (who was inexperienced in carrier regulatory matters) was given a large highway wall map of the United States, on which had been superimposed what was represented to the Trustee as the long-standing authorized routes of the bankrupt. This map, in general, confirmed the Trustee's general understanding (believed to be shared by the public generally) that those rights are, in substance, nationwide. This general understanding was generally further confirmed when the Trustee was given copies of (a) a printed, bound book entitled "Directory of Offices and Communities Served," printed and published by REA Express,

Inc., ICC Tariff A-3 and supplements thereto; (b) a large "Joint Directory of Pickup and Delivery Lmits at Express Offices," ICC Tariff A-4 and supplements thereto; and (c) "REA Service Guide Point List," a composite compliation of Tariffs A-3 and A-4, long maintained by REA for working use in the regular course of business. Each of these documents listed literally many thousands of cities, towns, villages and communities served by REA under its authorities. All points mentioned in Interrogatories Nos. I through V were specifically listed as points of authorized service in the composite Service Guide Point List at least as far back as June, 1973 - 2-1/2 years before the Trustee took over. The exact page and block identification number of each such listing is set out under the appropriate heading in the Trustee's initial response to these Interrogatories, and is hereby incorporated by reference. So far as the Trustee has been able to ascertain, no question was ever raised to REA's service at any of these points prior to these Interrogatories of May 19, 1976.

The Trustee's general understanding and belief were further strengthened when he was informed of the Commission's order in Ex Parte No. 242, Express Company Terminal Areas, 332 I.C.C. 91 (1967), authorizing the Express Company to designate its own, enlarged terminal areas around authorized points of service.

The Trustee's understanding and belief in REA's substantially nationwide authority were further confirmed when he was informed that operations over Interstate Highways paralleling authorized highways between the same termini are permissible without specific authorization -- even for ordinary, non-expeditious, motor carrier operations. No thought that such permission might not apply to an authority of an express motor carrier service -- where expedition is one of the primary considerations -- ever occurred to the Trustee and could not reasonably be expected to do so.

Accordingly, the Trustee is informed, believes, and respectfully submits, that he has the authorities questioned in Interrogatories Nos. I through V. He further submits that the foregoing evidence restores the burden of proof to complainants, where it lay in the first place.

7. For the reasons set forth above, the Trustee further submits that each of these operations was conducted under, at the very least, a bona fide color of right to serve the points. Moreover, the Trustee's operation of the Rexco Division was at the specific direction of various orders of the Bankruptcy Court permitting their continuation. Although various motor carriers appeared before that Court generally opposing such continuation, no objection was ever raised as to the Trustee's authority to serve any of the

points or operate over any of the routes which are the subject of Interrogatories Nos. I through V. And at no time did anyone from the Commission -- or anyone else -- question has right to do so. Under the circumstances, any conscientious Trustee would have provided service at those points and over those routes.

8. For the reasons embraced in the course of Sections 1 through 7 above, an inseparable part of the Trustee's answer to Interrogatories Nos. 1 through V is that, as of August 16, 1976, he does not know the precise document numbers and dates requested, but that such lack of knowledge (a) is immaterial to the actual existence or identity of such document numbers and dates, or to the lawfulness of his operations, and (b) does not in any way indicate the non-existence of such authorities. Moreover, his lack of knowledge as of this date is likely to be mooted in the very near future, as Alltrans Express, U.S.A., is in the process of making a thorough analysis of the Trustee's rights. Of far greater importance to the public than this entire proceeding, is the fact that if the Commission acts to protect the public interest in preserving nationwide, full-spectrum express service for shipments of all sizes, by promptly granting the forthcoming application of the Trustee and Alltrans Express, U.S.A., Inc. for Alltrans to temporarily operate the authorities of the Trustee, all

questions embraced in Interrogatories I through V as to the Trustee's knowledge, or as to the scope of his past operations, will become instantly moot.

Dated at Washington, D.C. this 16th day of August, 1976.

Respectfully submitted,

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and
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Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Dated: August 16, 1976

Certificate of Service

I hereby certify that on this 16th day of August, 1976 copies of the foregoing Response have been served upon all parties of record by mailing copies of the same to them via first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

JOHN M. CLEARY

C.I. 47

BEFORE THE

INTERSTATE COMMERCE COMMISSION

#47

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

PETITION FOR RECONSIDERATION OF ORDER OF
COMMISSIONER MURPHY SERVED JULY 29, 1976

Respectfully submitted,

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Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Dated: August 19, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

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COMMISSIONER MURPHY SERVED JULY 29, 1976

Comes now REA EXPRESS, INC., C. ORVIS SOWERWINE, TRUSTEE IN BANKRUPTCY (the Trustee) and prays the Commission to reconsider and set aside the order of Commissioner Murphy served July 29, 1976, on the following grounds:

1. Undeniably, Complainants and their non-carrier political association are seeking in these proceedings to permanently destroy 55,000 miles of regular-route carrier operating authorities -- the nation's largest --,

which formerly provided more than $430,000,000 worth of full-spectrum, scheduled express transportation services per year to some 26,000 cities, towns and villages. Notwithstanding the fact that such a proceeding and project patently demand the most meticulous and full observance of Due Process and fair hearing -- the order of July 29, 1976, although perhaps inadvertently, unlawfully and prejudicially deprives the Trustee of those operating authorities of adequate notice, fair hearing, and Due Process to protect them, in that:

(1) The first ordering paragraph assigns the matter for expedited oral hearing on August 30, 1976; under the circumstances set out hereinafter, such assignment grieviously and prejudicially deprives the Trustee of adequate time for preparation;

(2) The second ordering paragraph ordered the Trustee to waste half of its already wholly inadequate time in searching through many thousands of pages of public operating authorites, equally available to Complainants as to the Trustee, to assist Complainants in discharging their burden of proof;

(3) Notwithstanding the defective generality of the subject complainants and without any specification of the shipments complained of, the third ordering paragraph permits Complainants to serve their first specification of shipments alleged to support the Complainants (among the Trustee's 26,000 authorized points and 55,000 miles of authorized routes) only 5 working days before the hearing;

(4) The fourth ordering paragraph requires the Trustee to proceed with his evidence in opposition immediately upon the conclusion of Complainants' evidence, without actual opportunity to meet Complainants' allegations and evidence.

(5) The fifth ordering paragraph arbitrarily prohibits further procedural motions to protect the procedural rights of the parties to fair hearing.

2. At the time of the Order, the Commission had in its possession the Trustee's reply of June 18, 1976 to Complainants' Petition of June 7, 1976 for expedited hearing with no recess to give the Trustee opportunity to prepare. It also had copies of the Trustee's court-approved contract of July 27, 1976 with Alltrans Express, U.S.A., Inc., which provided for (a) resumption and preservation of the nation's only nationwide full-spectrum express service for all sizes of shipments (package, LTL, volume and truckload) over the REA authorities (including Sub-No. 2308TA which the Complainants' political association here requests be cancelled); (b) prosecution of the pending REA applications (including Sub-No. 2345, Part No. 181, which the Complainants' political association requests be dismissed), and (c) the filing of appropriate applications under §§5, 210a(b) and 207 by September 25, 1976.

Nevertheless, the order of July 29, 1976 arbitrarily, capriciously, and prejudicially grants, in substance, Complainants' said Petition of June 7, 1976,

(1) Without considering the Trustee's Reply to said Petition;

(2) Without considering the Order's frustration of the preparation of the forthcoming joint applications to preserve the valuable nationwide full-spectrum REA express service; and

(3) Without considering the fact that, assuming that the Commission acts to serve the public interest by granting temporary authority to preserve such full-spectrum express service and prosecute the pending applications, the contract of July 27,

1976 calls for action which will render moot most, if not all, the issues in these proceedings.

3. The Order of July 29, 1976 unlawfully and prejudicially orders the Trustee to relieve Complainants of at least part of their burden of proof, by searching literally many thousands of pages of authorities, equally available to Complainants, to determine whether Complainants' unsupported new allegations of unlawfulness -- in respects not specified in their complaints -- are valid.

4. The Order of July 29, 1976 has already been breached and violated by the Commission and the Complainants, to the prejudicial detriment of the Trustee. The fifth ordering paragraph arbitrarily prohibits further procedural motions. Nevertheless, on August 10, 1976, Complainants, without giving the Trustee an opportunity to oppose, secured an ex parte order, released to the Washington, D.C. Press Table in the 3:00 p.m. releases on August 12, 1976, which retroactively ordered the deposition one Daniel Kerrigan in New York City one-half hour prior to the release of the order, i.e., at 2:30 p.m. on the same day! That order (a) violated the prohibition in the Order of July 29, 1976; (b) deprived the Trustee of Notice and opportunity to oppose; (c) deprived the Trustee of fair notice and opportunity to prepare; (d) violated Rule 58 of the Commission's Rules governing issuance of orders for deposition; and (e) compelled counsel for the Trustee to devote a

substantial part of two days in attempting to find out what was going on and to protect the Trustee in the unlawfully ordered deposition, instead of preparing the aforesaid applications and evidence for this proceeding.

REQUESTED RELIEF ON RECONSIDERATION

In lieu of the ordering paragraphs of the Order of July 29, 1976, the Trustee prays the Commission:

1. To cancel the hearing now assigned to begin August 30, 1976, under the first ordering paragraph, and in lieu thereof to postpone the hearing for not less than 45 days thereafter;

2. To delete the requirement in the fourth ordering paragraph that the Trustee proceed with his case-in-chief immediately following completion of complainants' case-in-chief, and to substitute therefor a provision for adjournment of the hearing for 45 days following completion of complainants' case-in-chief for the Trustee to prepare his evidence in opposition;

3. To delete the second ordering paragraph in its entirety, leaving complainants to discharge their own burden of proof;

4. To retain the requirement that complainants serve their evidence and arguments upon the Trustee on or before August 23, 1976;

5. To delete the fifth ordering paragraph in its entirety.

Context Of The Order

In continuing conferences and written submissions to appointed representatives of the Commission, the Commission was kept fully informed of the following events, all of which confirm and aggravate the unfair and prejudicial effects of the order of July 29, 1976:

1. On February 18, 1975 REA Express, Inc. filed a petition for an arrangement under §322 of Chapter XI of the Bankruptcy Act, and the United States District Court for the Southern District of New York entered an order authorizing the debtor-in-possession to operate its business as the nation's only nationwide full-spectrum express service for all sizes of shipments (package, LTL, volume, and truckload).

2. The debtor-in-possession thereafter continued such full-spectrum operations, but incurred enormous operating losses of many millions of dollars, and on November 6, 1975 was adjudicated a bankrupt. On November 7, 1975, the properties of the bankrupt were transferred to the Trustee.

3. The Trustee thereafter continued to operate the business of the bankrupt, but, due to his limited resources and large debts, was authorized by the Court to continue only the portion of the operations known as the Rexco Divison, -- the only operations then feasible for the Trustee in the light of the Trustee's limited resources. By the beginning of January 1976, all other traffic had ceased to move.

4. Upon receiving the properties, the Trustee immediately set about to locate a successor willing to undertake to resume and preserve nationwide, full-spectrum express service for all sizes of shipments, and, to that end, to prosecute the pending REA applications. The Commission's designated representatives were fully informed of his intentions.

5. On November 25, 1975, seizing upon the bankruptcy, the complaint in No. MC-C-8862 was filed by a single complainant. This complaint consists exclusively of general allegations of intrinsic unlawfulness of the type of operations of the Trustee as not being "express" service. No point, no route, no movement, is specified in the complaint, nor is there any allegation of any operation at an unauthorized point, nor over an unauthorized route, nor any other violation, other than general allegations of operations in "non-express" service.

6. On December 1, 1975, notwithstanding the pendency of the Sub 2314 application since 1968 without any request by the Commission or any protestant that the matter proceed to hearing, the American Trucking Associations, Inc. -- the powerful national non-carrier,

political organization of the entire trucking industry -- filed a petition seeking (a) summary dismissal of the pending application in No. MC-66562 (Sub 2314) [Sub 2345, Part No. 181], solely upon the ground of lack of prosecution, and (b) cancellation of the corresponding temporary authority in No. MC-66562 (Sub 2308TA) on the ground of said dismissal.

7. Thereafter, [as things seem to happen in the trucking industry,] there ensued a continuing flood of similar general complaints and petitions to intervene as complainants by various individual carrier members of the American Trucking Associations, Inc., which continued right on through July. Answering this flood of petitions -- [believed to be wholly collusive] --, as well as as steady stream of unfair and oppressive procedural motions, petitons, requests, etc., kept the Trustee so busy in litigation that it substantially impeded his efforts to locate a qualified carrier that would be willing and able to undertake to preserve full-spectrum express service for the public and, to that end, to prosecute the numerous applications pending before the Commission. It also precluded any work on the preparation of these cases.

8. On April 8, 1976, at Complainants' behest, the Commission, Commissioner Murphy, subjected the Trustee to what is believed to be the most onerous, oppressive, and unfairly prejudicial discovery order in the Commission's history. The scope of that order went far beyond the scope of the complaints or any issue heretofore raised in these proceedings. Additionally, it would unlawfully relieve complaints of a large part of their burden of proof. Excessive amounts of the Trustee's time, personnel, and resources have actually and necessarily been expended in New York City and Philadelphia, Pa. in accommodating the multiple demands of the complainants as a result of said order.

9. On April 27, 1976, further burdening the Trustee, the Commission ordered the Bureau of Enforcement to participate, as a result of which the force of the Bureau's investigative apparatus and subpoena powers, in addition to distracting headquarters personnel, have been exerted upon field personnel of the Trustee, unprotected by counsel.

10. The flood of complaints, interventions, petitions, and motions continued unabated, increasingly designed to deprive the Trustee of a fair hearing and thwart the Commission's considering on the merits of any successor's

possible resumption and preservation of full-spectrum service and prosecution of the pending applications.

11. Notwithstanding the collusive efforts of the complainants and intervenors to litigate the Trustee to death, the Trustee did find persons willing to undertake to resume and restore the nation's only nationwide full-spectrum express service for all sizes of shipments. On May 24, 1976 the Bankruptcy Court ordered that a hearing be held on June 23, 1976 to show cause why an order should not be signed authorizing the Trustee to accept an offer by Alltrans Express, U.S.A., Inc. (a) to file appropriate applications to this Commission for authority to lease or assume operating control of all of the operating authorities of the bankrupt, and (b) to undertake to prosecute the pending REA applications, resuming and preserving nationwide, full-spectrum express service for all size shipments. Not only was the Commission fully informed of this order prior to its issuance by the Court, but the order was covered fully in the public press and public notices were inserted by the Trustee in the New York Times, the Wall Street Journal, and Traffic World.

12. The complainants, intervenors and the American Trucking Associations, Inc. reacted to this prospect that this unique and valuable national service might be preserved by filing joint petitions which unashamedly reveal on their face that complainants' sole purpose in these proceedings is to manipulate and subvert the Commission's process in such manner as to thwart and abort any consideration by the Commission on the merits from the standpoint of the public interest of the forthcoming joint applications of the Trustee and Alltrans Express, U.S.A., Inc. for authority to preserve such service for the nation's shippers.

13. First, on June 7, 1976, complainants and the American Trucking Associations, Inc., filed a collusive joint request for immediate oral hearing on June 28, 1976 -- i.e., the very day a reply would be due to said request under the Commission's rules of practice.

14. On the following day, June 8, 1976, in an even more brazen attempt to deprive the Trustee of his right

to a fair hearing and to deprive the public of this valuable nationwide service that long antedated the trucking industry, the complainants and the American Trucking Associations, Inc. filed another collusive motion. That motion even more unabashedly revealed their purpose to subvert the Commission's process and secure the permanent destruction of nationwide full-spectrum express service -- upon which the public formerly relied for more than $430,000,000 worth of transportation service in a single year -- without the Commission's full consideration of the public interest in the preservation of this national service. That motion is entitled "Motion Seeking The Holding In Abeyance Of Any Application Filed Under Section 210a(b) Seeking Approval Of The Commission To Control, Purchase, Lease, Manage Or Operate The Authorities Held By REA Express, Inc. Pending The Commission's Determination Of The Above Complaint Proceedings And The Immediate Revocation Of All Outstanding Temporary Authorities Held By REA Express, Inc." On its face it asks the Commission, not only to disregard it statutory duties to rule upon the foregoing applications and protect the public interest, but to consign the nation's only nationwide full-spectrum express service, -- and the largest set of carrier authorities under the Commission's jurisdiction (covering an estimated 55,000 miles of authorized routes) -- to a worse fate than Penn Central, numerous other large railroads, Associated Transport, Eastern Freightways, Transamerican Freight Lines, and other bankrupt carriers, without even considering the benefits of preserving such services in the public interest. In the case of the other bankrupts, the Commission lent its assistance to preservation of the carrier services. Here, the complainants are attempting to use this proceeding as a procedural vehicle to abort preservation of one-of-a-kind carrier services larger than any of those bankrupt services.

15. The motion of June 8 asks the Commission to take such action on the basis of official notice of wholly unproven, half-true allegations, and to ignore and violate long-settled legal principles and Commission precedent. In addition, it injects, and requests the Commission to assume by official notice a negative answer to the specific question of public interest which will be determined by the Commission after full consideration of all evidence in the forthcoming acquisition applications. The Trustee is informed and believes that,

at no time since the application if MC-66562, (Sub-No. 2314) was filed, has any protestant, or the Commission, demanded that that application be assigned to hearing or prosecuted to conclusion. Notwithstanding that fact, the June 8 motion of complainants -- including the American Trucking Associations -- boldfacedly asks this Commission to penalize the Trustee and the public, by dismissing the application for want of prosecution in order to preclude the Trustee and Alltrans Express U.S.A., Inc. from prosecuting it!

16. Subsequent to the filing of the abortive and subversive pleadings of June 7 and 8, extensive hearings were held in the Bankruptcy Court upon the Alltrans proposal, as well as various other proposals which, unlike the Alltrans proposal, explicitly or implicitly depended upon continuation of the Rexco operations in their present form. The Bankruptcy Court, by order dated July 16, 1976, granted the Trustee's application for authority to negotiate a formal contract with Alltrans Express, U.S.A., Inc. to preserve nationwide full-spectrum express service for all size shipments (package, LTL, volume, and truckload), including operations under No. MC-66562 (Sub-No. 2308TA) and all other outstanding temporary authorities, and to prosecute the pending REA applications, including No. MC-66562 (Sub-No. 2314)[Sub-No. 2345, Part No. 181].

17. Alltrans Express U.S.A., Inc. and the Trustee promptly began day-and-night negotiations, culminating in a contract, which was approved by the Bankruptcy Court on July 27, 1976 and executed the same day. The Commission was informed by the Trustee of the approval, execution and substance of the contract that same day, July 27, 1976. Copies of the Trustee's application for approval, the contract, and the Court's Order of Approval were, at the Trustee's direction, delivered to the Commission by hand on the next day, July 28, 1976. Among other things, the contract requires the applications to be filed on or before September 25, 1976, in order that full-spectrum express service might be resumed at the earliest possible date.

18. The next day, i.e., July 29, 1976, the order here complained of was issued. Copy thereof was not received by the Trustee's counsel in New York until Agust 4, 1976.

19. Notwithstanding the prohibition in the fifth ordering paragraph of that order, on August 10, 1976, counsel for complainants filed and appeared ex parte at the Commission to support a petition to take the deposition of one Daniel Kerrigan in New York City, at 2:30 p.m. on August 12, 1976 -- two days later. The Trustee was afforded no opportunity to oppose the petition. Copy of the petition was mailed to the Trustee after a subpoena had been issued. An order retroactively authorizing the deposition was issued in the 3:00 p.m. Commission releases on August 12 -- after the deposition had begun. Apart from being deprived of adequate opportunity to prepare for the deposition, the Trustee's counsel was compelled to devote a substantial part of two days in attempting to find out what was going on, and in participating in the deposition, instead of preparing the aforesaid applications, or evidence for this proceeding.

Deprivation Of Adequate Notice And Fair Hearing

1. As the guardian of the public interest, this Commission has a duty to ensure that procedural due process and substantive due process are accorded to all parties. It is axiomatic that due process in an administrative hearing includes a fair trial, conducted in accordance with fundamental principles of fair play and applicable procedural standards established by law. Swift & Company v. United States, 308 F. 2d 849 (1962). As noted by Chief Justice Hughes in Morgan v. United States, 304 U.S. 1, 18 (1937), the fundamental right to a hearing ". . .embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them."

2. As the Commission knows, the Trustee has been busily engaged, since prior to the filing of the first of the numerous collusive complaints in these proceedings, in prodigious efforts to find a successor to restore the nation's only nationwide express service to full-spectrum, scheduled, express service for all sizes of shipments (package, LTL, volume and truckload) upon which the public formerly depended for more than $430,000,000 worth of transportation service per year.

3. In addition, notwithstanding his limited financial resources and lack of personnel (he presently employs only 75 persons), the Trustee was, during the entire period from November 7, 1975 (prior to any complaint in the proceeding) through July 27, 1976 (two days before the order here complained of), steadily engaged in, among countless other duties, collecting and protecting the assets of the bankrupt scattered over the United States; converting real estate and other non-operating assets to cash; frequent hearings and other proceedings in the Bankruptcy Court and various Appellate Courts; lengthy preliminary negotiations with various prospective successors; preparing and filing a voluminous application and supporting documentation with the Bankruptcy Court for authority to contract; lengthy public hearings before the Bankruptcy Court on the various proposals; extended negotiations with

Alltrans of the ultimate contract to preserve the service; and an application to the Bankruptcy Court for approval of the contract. He has held numerous conferences with, and submitted various reports and other documents to, representatives designed by the Commission, from November 19, 1975, in New York City, to and through May 5, 1976, at the Commission, in Washington, D.C., and his counsel had numerous telephone conferences with and reports to representatives designated by the Commission for this purpose, to and including July 27, 1976. All of these activities undertaken at the request of the Commission were designed to and did keep the Commission fully posted on all REA developments as they were actually taking place.

4. As the Commission's files in this case will confirm, the Trustee has, through the entire period, been bombarded and harassed in these proceedings with a continuing flood of collusive complaints, interventions, petitions, motions, and oppressive requests, including a request for "witch-hunt" discovery through the Trustee's files on matters going far beyond the scope of the complaints which took place in New York City and Philadelphia, Pa. on more than five separate occasions one of which lasted almost a full week followed by a full week of investigation by the Bureau of Enforcement, substantially disrupting the Trustee's operating headquarters. In addition the Trustee was subjected to depositions of his

essential personnel; depositions of others; interrogatories demanding that the Trustee make a search of many thousands of pages of operating authorities equally available to Complainants, to relieve them of their burden of proof on matters outside the scope of the complaints; the motion of June 23, 1976 for more complete answers to such interrogatories; the petition of June 7, 1976 for immediate hearing; the petition of June 8, 1976 to hold in abeyance whatever applications he may file; investigations by the Commission's enforcement apparatus, etc., etc., etc. These activities literally left him with no time to adequately oppose these harassing pleadings and oppressive orders, much less adequately prepare for hearing in the present proceedings. Those petitions continued steadily from November 25, 1975 right up into the week before the order of July 29, 1976 here complained of.

5. As indicated, the Trustee and Alltrans, after more than a week of day-and-night negotiations, received Court approval for, and executed the contract to resume express service on a full-spectrum basis, and to prosecute the pending applications on July 26, 1976. The Court's order requires that the enormous, time-consuming requisite applications to this Commission under §§5, 210a(b) and 207 be prepared and filed within 60 days -- i.e., on or before September 25, 1976 -- in order that full-spectrum express service for the public may be resumed at the earliest date

possible. Intensive joint preparation of these applications was immediately begun on July 28, 1976 -- the day before the July 29 order here complained of, only to be impaired a few days later.

6. The Order of July 29, 1976 -- received by the Trustee's counsel in New York City on August 4, 1976 -- assigned the proceedings for hearing on August 30, 1976, only 18 business days later. It further ordered the Trustee, notwithstanding his limited resources, to waste all but 10 of those few business days in "complete answers" to unconscionable interrogatories demanding that the Trustee undertake a monumental, unreasonable, oppressive, prejudicially burdensome and utterly immaterial exercise in searching through literally thousands of pages of operating authorities -- all equally available to the Complainants -- to locate the page number of 6 of the most obscure points among REA's 26,000 points of service, and 4 short highway segments among REA's 55,000 miles of authorized routes, none of which 6 points or 4 highway segments was mentioned in the Complainats or has anything to do with the allegations in the Complaints! Preparation of such "complete answers" and preservation of its rights with respect thereto substantially consumed the Trustee's counsel's time through August 16, 1976.

7. Meanwhile, however, on August 10, 1976, Complainants secured the previously described ex parte order, released at 3:00 plm. on August 12, 1976, retroactively ordering a deposition to be held in New York City at 2:30 p.m. on August 12. Attempts to track down what was going on, and to protect the interests of the Trustee at the unlawful deposition, consumed a substantial part of 2 full business days and 2 evenings.

8. As previously indicated, the Order of July 29 allowed the Complainants, intervenors, and Bureau of Enforcement until August 23, 1976 -- i.e., only 5 working days before the hearing -- to disclose their evidence and arguments to the Trustee. This would be not merely the first disclosure of Complainants' evidence, but the first disclosure of any specific movement alleged by the Complainants to be unlawful in any of the general respects alleged in the Complaints! As a result of the "witch-hunt" discovery order, they have recently informally identified some shipments which they now allege to be unlawful in respects not alleged in the Complaints, but the Complainants have given the Trustee no fair notice as to any specific movement alleged to support any of the general allegations of the Complaint, nor wherein any movement allegedly supports such allegations. Their first such notice to the Trustee will be the receipt of the evidence to be filed on August 23, 1976 -- only 5

working days before hearing. On its face, that is insufficient time to constitute adequate notice or fair hearing upon the defectively general allegations of these Complaints.

9. From the foregoing, it is apparent that the Trustee has been seriously prejudiced by the errors of (a) the Commission's acceptance of fatally defective complaints containing nothing but general, totally unspecific allegations of unidentified "non-express" operations; (b) its issuance of an oppressive discovery order throwing open the Trustee's files to a "witch hunt" by Complainants on matters outside the scope of the Complaints; (c) its injection of the Bureau of Enforcement into the proceedings on the side of the Complainants' (d) its allowing a multitude of other carriers in other parts of the nation to broaden the issues by intervention on the side of the Complainants; and (e) its permitting the Trustee to be so harrassed by unfair petitions, motions, requests, depositions, and other procedural maneuvers, that he has had not time to prepare his case. All of these prjudicial errors have been compounded by the Order of July 29, 1976, in the manner heretofore described. To protect himself and the rights and services for the public he is trying to preserve from the resulting prejudice and total deprivation of adequate notice and fair hearing, the Trustee has been compelled by

the Order to prepare and file this petition. This has further reduced the time available to him for the preparation of his case, thereby aggravating the prejudice resulting from the Order. More importantly, it has prevented his assistance in the preparation of the joint applications with Alltrans Express U.S.A., Inc. for the preservation of nationwide, full-spectrum express service in the public interest.

10. The intrinsic prejudice of the inadequate notice provided for in the Order is further aggravated by the fact that Counsel for the Trustee are committed to appear at a hearing in the United States District Court for the Southern District of New York on an appeal from a decision of the Bankruptcy Court, beginning August 24, 1976. Preparation for, and participation in such hearing, further reduces the actual time available to the Trustee for fair opportunity to meet any specific allegations within the scope of the Complaints to two or three days.

WHEREFORE, defendant REA EXPRESS, INC., C. ORVIS SOWERWINE, TRUSTEE IN BANKRUPTCY, respectfully petitions the Commission to reconsider and set aside the Order served July 29, 1976 herein, and to grant the following, further relief:

1. To cancel the hearing now assigned to begin August 30, 1976, under the first ordering paragraph, and in lieu thereof to postpone the hearing for not less than 45 days thereafter;

2. To delete the requirement in the fourth ordering paragraph that the Trustee proceed with his case-in-chief immediately following completion of complainants' case-in-chief, and to substitute therefor a provision for adjournment of the hearing for 45 days following completion of complainants' case-in-chief for the Trustee to prepare his evidence in opposition;

3. To delete the second ordering paragraph in its entirety, leaving complainants to discharge their own burden of proof;

4. To retain the requirement that complainants serve their evidence and arguments upon the Trustee on or before August 23, 1976;

5. To delete the fifth ordering paragraph in its entirety.

Respectfully submitted,

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Special Counsel to the Trustee

Of Counsel:

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John K. Maser III

Dated: August 19, 1976

Certificate Of Service

I hereby certify that on this 19th day of August, 1976 copies of the foregoing Petition have been served upon all parties of record by mailing copies of the same to them via first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

JOHN M. CLEARY

C.I. 48

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JOINT REPLY OF COMPLAINANTS TO PETITION FOR RECONSIDERATION DATED AUGUST 19, 1976

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August 20, 1976

Before the

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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

JOINT REPLY OF COMPLAINANTS TO PETITION FOR RECONSIDERATION DATED AUGUST 19, 1976

COME NOW Complainants and jointly ask the Commission to deny summarily the "Petition For Reconsideration Of Order Of Commissioner Murphy Served July 29, 1976," filed by REA Express, Inc., C. Orvis Sowerwine, Trustee in Bankruptcy (hereinafter "REA"). In its Petition, REA seeks to have the Commission's Order served July 29, 1976, modified in several respects including: (1) postponement of the oral hearing now scheduled to begin on August 30, 1976; (2) the adjournment of the hearing following presentation

of Complainants' case; and (3) the retention of the requirement that Complainants' evidence be submitted on August 23, 1976. In addition, REA seeks to have the Order modified insofar as it requires REA to respond to certain interrogatories filed by Complainants asking it to identify the authority by which it serves certain points. Lastly, REA asks that the fifth ordering paragraph be deleted.

It is Complainants position that the pleading filed by REA simply does not demonstrate any adequate basis for any of the above relief and, therefore, REA's petition should be denied in its entirety. Since REA apparently waited until after 7:00 p.m. of the evening of the last working day before Complainants are to submit their evidence before raising its objections, Complainants will not attempt to respond to each of the REA assertions and innuendos. Instead, a brief response will be made that focuses primarily on the first three requests.

I.

Complainants urge that any delay in this matter will simply prolong the blatantly illegal operations of the REA Rexco Division. The Rexco operations, as Complainants will show, leave absolutely no doubt that it has been conducted in utter disregard for the rules, regulations and interpretations of the Commission. Furthermore, these operations have had a significant detrimental effect on the regulated trucking industry which has seen millions of dollars of potential freight revenues

siphoned off by these illegal operations. To delay this matter for the three-month period that REA desires would unquestionably work to the detriment of the entire industry.

The Trustee states emphatically that the Commission's Order only allows him five working days before the hearing to review Complainants' evidence, which pursuant to that Order is to be served August 23, 1976. He goes on to state that not only will this be the first time he has seen this evidence, but that this will be the first disclosure of any specific movements alleged to be illegal by the Complainants.

Complainants, however, wish to point out that REA has been less than candid. For example, on August 6, 1976, Complainants served by Federal Express a copy of Complainants' traffic study upon the Trustee's counsel in New York. In addition, Complainants made available on the day they were compiled, May 19, 1976, the working documents which form the basis of the traffic study. Thus, the only matter not specifically pointed out to Trustee's counsel on May 19, 1976, was the exact violation. However, that information has been in counsel's hands for nearly two weeks.

In addition, a copy of every piece of evidence obtained as a result of discovery has been made available to the other side. Furthermore, this evidence, when viewed in light of the complaints filed by Complainants, should serve to highlight the line of attack to be employed by Complainants. Thus, it is doubtful that the oral hearing will serve to introduce any new theories, but will merely substantiate Complainants' claims

that the Rexco operation is illegal and should be halted immediately. Under the above circumstances, it is respectfully submitted that REA will not be deprived of any procedural rights by being required to proceed with its case immediately following the presentation of the Complainants' case-in-chief.

Finally, the Commission should recognize that the Trustee at the time of hearing will have had some of Complainants' direct evidence in his possession for over four weeks. This and the fact that Complainants must serve the Trustee with their evidence one week in advance of hearing, gives the Trustee a significant advantage in conducting and designing a defense. To, therefore, require Complainants to meet the August 23, 1976, deadline while granting REA additional time to respond will unquestionably penalize Complainants. Furthermore, it will simply serve to perpetuate the illegal Rexco operations to the detriment of the regulated trucking industry.

II.

Complainants do, however, wish to respond briefly to certain assertions raised by the Petitioner. In the first place, complainants do not feel that their actions have harassed the Trustee or contributed to a deprivation of due process. Complainants, in response to the Commission's order of consolidation, have attempted to work together in order to ease the burden on the Trustee. Had Complainants worked separately, the Trustee would have had to respond to multiple pleadings at every turn of the road thereby creating needless duplication of effort and expense.

Second, Complainants resent the charge that they have taken unfair advantage of the discovery rules. The rules are there to be used and the fact that Complainants did so should not be held against them.

Finally, Trustee's complaint that the Commission's order relieves Complainants of their burden of proof by forcing the Trustee to answer "unconscionable interrogatories" is patently absurd. In order not to prejudice REA by raising false spectors concerning REA's authority, Complainants expended a great amount of time and effort in reviewing and indexing REA's authorities, both permanent and temporary, to determine what points REA could serve. Only after Complainants were unable to verify the existence of specific authorities which would authorize service at the points named in the interrogatories did Complainants request identification by the Trustee of his authority. While the Trustee now insists that he was forced to waste valuable time in searching for these specific authorities, it should be noted that no responsible carrier would have made such movements without verifying the existence of appropriate authority. The fact that REA hauls first and checks its authority second is thus yet another example of REA's total unwillingness to restrict its operations to those authorized by the Commission.

In short, had the Trustee adequately supervised the Rexco operation in order to insure its compliance with the Commission's rules, regulations and past interpretations of REA's authority, this proceeding would not have been necessary. Instead, the Trustee chose to disregard the clear thrust of

nearly 40 years of interpretations by the Commission of the phrase "general commodities moving in express service" in a blatantly illegal attempt to introduce REA into a field of service which was never authorized, much less contemplated, by the Commission in granting REA its "express" authorities.[1/]

CONCLUSION

In conclusion, Complainants respectfully request that the Petition for Reconsideration be denied. The Commission's Order complained of in no way deprives Respondent of due process. However, to adopt the timetable presented by said pleading will only cause needless delay and perpetuate the illegal Rexco operations to the continued detriment of the regulated trucking industry that is represented herein both by individual companies and by the American Trucking Associations, Inc., which both the Commission and the Supreme Court have long recognized as the legal spokesman for the many regulated trucking companies throughout the nation.

Respectfully submitted,

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August 20, 1976

1/ While REA now speaks in terms of a "full spectrum" express service, it should be noted that REA's certificates are limited to simple express service. Furthermore, the evidence introduced by REA in its many applications, as the literal words of the Commission's decisions will show, was not intended to secure anything other than simple "express" authority. REA's attempt to argue otherwise at this late date runs counter to over 40 years of Commission experience with REA's certificates and should, therefore, be summarily rejected.

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BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC., ET AL.

No. MC-C-8864
SCHNEIDER TRANSPORTATION, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. v. REA EXPRESS, INC.

INITIAL STATEMENT AND ARGUMENT

OF

THE BUREAU OF ENFORCEMENT

INTERSTATE COMMERCE COMMISSION

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Due: August 23, 1976

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BACKGROUND AND STATEMENT OF THE CASE

REA Express, Inc. is a Class I carrier holding operating authority under No. MC-66562, and numerous Sub numbers thereunder, to transport general commodities in express service between a multitude of points in the United States. On February 18, 1975, the carrier filed a petition for an Arrangement under Section 322 of Chapter XI of the Bankruptcy Act (11 U.S.C. § 722). In the Matter of REA Express, Inc., Bankruptcy No. 75 B 253 (S.D.N.Y.). On November 6, 1975, REA Express was adjudicated a Bankrupt by Order of the Court. On the following day, REA Express issued Embargo Notice No. 1, which stated that, effective immediately, the pickup and delivery of REA shipments would cease. In Amendment 1 to Embargo Notice No. 1, also effective as of November 7, it was indicated that the embargo did not apply to the operations of the REXCO Division of REA Express.

The REXCO Division began operations in August 1975 and has continued operating up through the present time. Transportation is performed--purportedly,

pursuant to the operating authority of REA Express--through a system of agents, compensated by commission, who solicit traffic for REXCO and lease equipment with operators to provide hauling capability. Rates are published in REXCO's Commodity Tariff 85 (ICC 153).

The instant proceedings arise from numerous formal complaints which have been filed with the Commission concerning the operations of the REXCO Division. Basically, the complaints challenge the authority of the REXCO Division to conduct the operations and service which it is providing. They contend that the REXCO operations constitute ordinary freight service and, consequently, are beyond the scope of the express service which is described in the operating authority of REA Express. Through its Trustee in Bankruptcy, REA Express denies the allegations.

In addition, the American Trucking Association, Inc.--a complainant--filed a petition seeking dismissal of the application by REA Express for permanent authority in Docket No. MC-66562 (Sub-No. 2314) and cancellation of the temporary authority

granted to REA Express in Docket No. MC-66562 (Sub-No. 2308 TA).

By order served on April 8, 1976, the four outstanding complaint proceedings concerning the REXCO operations[1/] and the two proceedings arising from the petition of the American Trucking Association[2/] were consolidated into one proceeding. By order served on April 27, 1976, the Bureau of Enforcement was directed to participate as a party in the complaint proceedings for the purpose of developing the record.

With respect to the scope of its participation in these consolidated proceedings, it is the Bureau's position that the transportation being performed by the REXCO Division of REA Express, Inc. is operationally inconsistent with the concept of express

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1/ Captioned on the cover page of this "Initial Statement and Argument".

2/ No. MC-66562 (Sub-No. 2345) (Part 181), REA Express, Inc. -- Petition of American Trucking Associations, Inc. for Dismissal of Application, and No. MC-66562 (Sub-No. 2308 TA), REA Express, Inc. -- Petition of American Trucking Association, Inc. for Cancellation of Temporary Authority.

service, as it has been described by the Interstate Commerce Commission. Consequently, the operations of the REXCO Division are beyond the scope of the operating authority which has been granted to REA Express, Inc. in Docket No. MC-66562 and numerous Sub numbers thereunder.

SYNOPSIS OF
PREPARED STATEMENT OF
LOUIS P. BUSSOLATI

Accompanying this "Initial Statement and Argument" is a prepared statement by Louis P. Bussolati, Transportation Specialist of the Interstate Commerce Commission.

In his statement, Mr. Bussolati describes a recent investigation of the REXCO operations which he conducted with the assistance of two other Transportation Specialists. Briefly, the investigation yielded documentation of REXCO transportation which discloses:

1. substantial and operationally unnecessary interruptions in service during the course of transportation movements

2. the performance of transportation movements along routes not wholly within the operating authority of REA Express

3. transportation movements conducted with the use of equipment other than the ordinary van-type equipment

4. widely varying routes and transit times in separate transportation movements between a given origin and destination

5. the providing of service on an unscheduled, "call-on-demand" basis

6. emphasis upon the handling of volume shipments

In addition, the investigation included interviews with several REXCO agents. Mr. Bussolati's prepared statement includes a brief synthesis of the information gained from those agents regarding their operations for the REXCO Division.

ARGUMENT

The central problem from which these complaint proceedings arise is the definition and interpretation of "express service". The Commission has acknowledged that express service is, at best, a relative concept which is not susceptible of precise definition. Railway Exp. Agency, Inc., Extension -- Nashua, N.H., 91 M.C.C. 311, 324 (1962) [hereinafter referred to as "Extension -- Nashua, N.H."]. Chemicals in Aggregate Shipments -- Midland, Mich. to the East, 326 I.C.C. 657, 661 (1965). However, the Commission has described certain characteristics which are indicative of the presence or absence of express service. Generally, those characteristics comprehend three broad areas: the nature of the commodities for which express service may be provided, the volume and handling of those commodities, and the particular attributes of the transportation movements in express service.

The nature of the commodities

In Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573 (1955), the Commission

outlined the criteria necessary to the rendition of a bona-fide express service. The first of these criteria is the

> ...holding out together with the ability to transport any commodity which may be safely transported in ordinary van-type equipment, including those requiring a maximum degree of care or security or both... Id. at 581.

Thus, the description of commodities which are within the contemplation of express service is not in the form of a listing of appropriate articles or merchandise. Rather, the description is in terms of the equipment in which those commodities may be safely transported.

This formula is reiterated in Extension -- Nashua, N.H., supra at page 325, in which the Commission construed the concept of general commodities moving in express service, as it applied to REA's operations. The Commission observed that express service, as performed by motor vehicle, always has been a service performed in ordinary van-type equipment. Consequently, commodity descriptions--such as liquid commodities in tank vehicles, commodities requiring special equipment, or household goods -- which relate the fundamental use of specialized equipment

by specialized carriers, are excluded from the contemplation of express service. Such an exclusion, the Commission believed, was a reflection of the "true nonspecialized nature" of express service.

The Commission had occasion to re-examine this aspect of Extension -- Nashua, N.H. in Freight, All Kinds, L.C.L. Container Charges -- U.S.A., 323 I.C.C. 468 (1964), in which it approved REA's proposed rates for less-than-carload freight to be transported in containers holding up to 3,000 pounds:

> ...the basic issue in the proceeding is whether certificates limiting REA to the transportation of "general commodities, in express service" prohibit REA from carrying a particular type of traffic or whether they prohibit REA from performing a particular type of service. Id. at 477.

The Commission concluded that REA was not prohibited from handling any particular type of traffic, but, that the traffic which it did handle had to move in express service. As controlling authority for the definition of express service, the Commission cited and discussed Arrowhead Freight Lines. In addition, the reiteration in Extension -- Nashua, N.H. was explicitly reaffirmed.

In contrast to the principle that express service is limited to commodities which may be safely transported in ordinary van-type equipment, is the appreciable portion of REXCO traffic which is performed with equipment other than van-type equipment. Granted, some commodities which may be safely transported in van-type equipment are susceptible of safe transportation in another type of equipment at the carrier's convenience. However, the easy substitution of different kinds of equipment for the van-type is inconsistent with the Commission's indication that express service has traditionally been a service performed in a van. Moreover, such substitution encourages the transportation of commodities which require other than van-type equipment and discourages the transportation of commodities whose fragility or value might require such equipment. The consequence is that this aspect of the distinction between express service and ordinary freight service becomes blurred.

This blurring has become evident in the service of the REXCO Division, in that REXCO has begun transporting shipments for which flatbed or open-top equipment was required. In addition, Item 220 of the REXCO Commodity Tariff 85 (ICC 153) excludes from service

commodities which customarily could move in express service because of their value or fragility. For example, Item 220 excludes:

> live animals, birds, or fish
> perishable products
> bills of exchange, drafts, and securities
> furs or fur trimmed clothing
> jewelry or pearls
> precious metals
> valuable papers
> watches

Volume and handling

Another of the criteria of express service outlined in Arrowhead Freight Lines is the providing of

> ...equally expeditious transportation and careful handling for all accepted shipments, regardless of their volume, special demands, or value, from the point of pick-up to the point of delivery... Id. at 581.

This criterion illustrates a distinction between express service and ordinary freight service, in that the latter provides expeditious service only within the limits of efficient and economical operating practices, which may vary with the amount and type of traffic involved. As is explained in Extension --

Nashua, N.H., supra at page 340, the fundamental function of an express service is as a premium service which is utilized by shippers when speed or special handling, rather than rates, are of importance.

Similarly, the characteristic of express service as being available to the shipper, regardless of the volume of the shipment, also rests upon a distinction from ordinary freight service. As noted in Arrowhead Freight Lines, supra at page 580, ordinary freight carriers are not interested in small shipments of delicate and fragile commodities because of the added cost and care in handling, or the carriers' inability to assure definite delivery times. This does not mean that express service excludes, per se, the transportation of volume shipments under any and all conditions. Arrowhead Freight Lines, 61 M.C.C. 131 at page 140. However,

> ...This Commission has always intended the term "express service" to mean generally the expedited handling of small-parcel traffic which common carriers of ordinary freight do not desire usually or are not able to perform. Extension -- Nashua, N.H., supra at page 324.

Application of these principles to the character of the REXCO operations indicates that, in this request also, the distinction between express service -- as performed by the REXCO Division -- and ordinary freight

service, becomes blurred. Many of REXCO's transportation movements include substantial interruptions in service. Often, these interruptions result because the driver of the vehicle -- who apparently does not operate at the direction of REXCO during the course of the transportation movement -- might drive to his hometown and go off-duty for 24 hours or more before continuing to the destination.

With respect to volume, the REXCO tariff lists rates only for shipments of 16,000 pounds or more. Whatever less-than-truckload traffic is carried by the REXCO Division is accepted subject to truckload minimum rates. Moreover, examination of the REXCO tariff indicates that it is a flat rate, point-to-point tariff in which 16,000 pounds is transported at approximately the same charge as 40,000 pounds. For example, the transportation of varying volumes of drugs at the rate per hundred-weight specified in the REXCO tariff yields the following charges:

Pounds		Rate		Charges
40,000	@	64 ¢	=	$256.00
38,000		67		254.60
36,000		70		252.00
32,000		79		252.00

Pounds	Rate	Charges
30,000	84 ¢	$252.00
24,000	106	252.00
20,000	126	252.00
16,000	159	252.00

(Reference: Item 1120 on fifth revised page 42, Item 1500 on fourth revised page 43, and Item 30 on revised page 3 of Commodity Tariff 85, ICC 153).

Thus, it is clear that the rate structure of the tariff discourages the tender of small shipments to REXCO, in favor of volume traffic.

Transportation movements in express service

The nature of the transportation movements which characterize express service is described in Arrowhead Freight Lines, supra at page 581, as

> ...actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins and which in practice are not changed except after substantial notice to the general public...

In contrast to this description, the operations of the REXCO Division are not conducted according to

any established schedule. Rather, a transportation movement commences only after a request for service is received by a REXCO agent -- i.e., "call-on-demand" service -- and the motor vehicle equipment necessary to the performance of that movement, with driver, is leased. Since REXCO exercises little control over the driver during the course of the transportation movement, the highway transit time between a given origin and destination may vary widely. Consequently, even after a movement has begun, a fixed delivery time for the shipment cannot be predetermined.

This variance of the REXCO operations from the above-quoted criterion in Arrowhead Freight Lines is amplified by the description of express service in REA Express, Inc., Application for Emergency Temporary Authority, 117 M.C.C. 80 (1971). After outlining the history and operations of REA as an express service carrier, Application for E.T.A. reiterates the necessity to express service of operations conducted upon firmly established schedules which provide fixed delivery times. Moreover,

> ...express service, whatever else it may be, must be performed as an expedited, regular-route service. Such service is operationally inconsistent with irregular-

> route service which, in the usual concept envisions a "call-on-demand", unscheduled operation. Id. at 89.

Thus, the "call-on-demand", unscheduled service aspects of REXCO transportation indicate the absence of regular-route operations which are essential to express service.

The elements of regular-route service -- which, in turn, are necessary elements of express service -- are described in detail in Transportation Activities of Brady Transfer & Storage Co., 47 M.C.C. 23 (1947). In that report, the Commission concluded that there is no general rule by which the regular- or irregular-route character of all operations can be determined. However, the following practices were found to be indicative of regular-, as opposed to irregular-, route service:

1. operation according to a predetermined plan which includes the consistent day to day transportation in volume of aggregated lots of numerous less-than-truckload shipments

2. the vigorous solicitation of as many shippers as possible for both less-than-truckload and truckload traffic

3. the maintenance of terminals at which less-than-truckload shipments may be assembled, sorted, and loaded into line-haul equipment

4. the habitual and frequent use of fixed routes between fixed termini

5. a service of such fixed and definite periodicity that it becomes known to and relied upon by shippers and consignees generally

6. a regularity in the arrival and departures of equipment, pursuant either to a published schedule or habitual operations, which is not characteristic of carriers operating only on-call.

In contrast, transportation conducted by the REXCO Division lacks the structured operation and the predictable flow of traffic between termini which these indicia describe. Consequently, REXCO transportation is more in the nature of an irregular-route operations, and thus, not within the contemplation of express service.

Conclusion

Admittedly, express service is a relative concept which is not susceptible of precise definition.

Several principles descriptive of express service, however, have been formulated by the Commission. Examination of the REXCO operations within the context of these principles reveals that the traditional distinctions between express and ordinary freight service have been either blurred or erased. Therefore, in the instant proceedings, The Bureau of Enforcement requests findings that

1. the transportation being conducted by the REXCO Division of REA Express, Inc. is operationally inconsistent with the concept of express service, as it has been described by the Interstate Commerce Commission, and that consequently,

2. the operations of the REXCO Division are beyond the scope of the operating authority which has been granted to REA Express, Inc. in Docket No. MC-66562 and numerous sub numbers thereunder.

The Bureau further requests that, in accordance with these findings, the Commission order that REA desist from the transportation of property in ordinary freight service, and violation of the terms, conditions, and limitations contained in its certificates

of public convenience and necessity and in its grants of temporary and emergency temporary authority.

Respectfully submitted,

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Before the
INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

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BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

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AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

ARGUMENT AND EVIDENCE OF COMPLAINANTS

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Before the
INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

ARGUMENT AND EVIDENCE OF COMPLAINANTS

COME NOW Complainants, in response to the Order of the Interstate Commerce Commission, served July 29, 1976, and respectfully submit their argument and evidence in support of their requests that a cease and desist order be issued against the operations of the Rexco Division of REA Express, Inc.; and that the temporary authority issued to REA Express, Inc. in Docket MC-66562 (Sub-No. 2308 TA) be cancelled and the corresponding permanent authority application in Docket MC-66562 (Sub-No. 2345, Part No. 181) be dismissed. In support thereof, Complainants respectfully state as follows:

I.

INTRODUCTORY STATEMENT

By complaints filed in November and December 1975, 18 motor carriers, faced with an ever-increasing number of truckload shipments being diverted by the so-called Rexco Division of REA Express, Inc. (hereinafter "Rexco" and "REA"), which was allegedly operating pursuant to the authorities held by REA, challenged the legality of those shipments.[1/] These individual carriers were joined by the American Trucking Associations, Inc. which, in addition to filing a complaint, on December 1, 1976, filed a "Petition Seeking Dismissal of the MC-66562 (Sub-No. 2314) Permanent Authority Application and for Cancellation of the MC-66562 (Sub-No. 2308 TA) Temporary Authority," alleging, inter alia, that REA had made no attempt in the previous seven

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1/ The original Complainants were as follows: Brada Miller Freight System, Inc.; Schneider Transport, Inc.; Associated Truck Lines, Inc.; Associated Transport, Inc.; B&P Motor Express, Inc.; Earl C. Smith, Inc; Eastern Express, Inc.; Great Lakes Express Co.; Holland Motor Express, Inc.; Interstate Motor Freight System; Jones Motor; Jones Transfer Company; Long Transportation Company; McLean Trucking Company; Ryder Truck Lines, Inc.; Strickland Transportation Co., Inc.; U.S. Truck Company, Inc.; and United Trucking Service, Inc. In addition, several motor carriers have subsequently intervened including Artim Transportation System, Inc.; George Transfer & Rigging Co.; Kaplan Trucking Company; Red Arrow Freight Lines, Inc.; Central Freight Lines, Inc.; Brown Express, Inc.; Texas Oklahoma Express, Inc.; Saia Motor Freight Line, Inc.; Alamo Express, Inc. Home Transportation Company, Inc. and Southwestern Motor Transport, Inc. Throughout this document "Complainants" will be used to describe all of these. Associated Transport having been adjudged a bankrupt has ceased motor carrier operations and has, therefore, withdrawn as a Complainant.

years to prosecute the pending permanent application while continuing to operate under temporary authorities, and that REA had specifically repudiated the instant temporary authority as unworkable for the REA type operation in a subsequent application. Following the filing of REA's answers, the Commission, by Order served April 8, 1976, consolidated, without objection, all of the above into one proceeding.

In this consolidated proceeding the Commission is presented with two issues: (1) whether to issue a cease and desist order against the Rexco operations, and (2) whether to dismiss the permanent authority application filed by REA Express in 1968, and to cancel accompanying authority granted REA at that time. It is Complainants' position that the evidence herein will demonstrate that REA through its Rexco Division has engaged in a pattern of operations that leave no doubt that it has willfully and intentionally violated the terms of its authorities and that it has deliberately ignored the rules, regulations and interpretations of the Commission and is, therefore, operationally unfit. In addition, Complainants submit that since REA has been adjudged a bankrupt and is being liquidated, it is financially unfit and, furthermore, is not in a position either to perform an express service or to prosecute its pending permanent application in Docket No. MC-66562 (Sub-No. 2345, Part 181) which should be dismissed.

Specifically, the evidence will show that REA's Rexco operations fail to satisfy the criteria of an "express service" as that term has been defined by the Commission in numerous cases involving interpretations of REA's authorities, which are limited to the transportation of "general commodities moving in express service over regular routes."[2/] Thus, it will be shown that Rexco does not operate under any fixed schedules and that it does not operate over REA's designated regular routes. Furthermore, it does not hold itself out to accept all commodities regardless of volume, but has instead limited itself to truckload shipments. In addition, it has embargoed all small shipments and imposed substantial minimum weight requirements. In addition, Rexco is also blatantly disregarding the route and point limitation in REA's authorities and is otherwise engaging in numerous violations of the Commission's rules and regulations. Furthermore, it will be shown the express rights held by REA are dormant and that the Rexco operation, which is the only service ostensibly being offered pursuant to the REA authorities, has not served to keep REA's express authorities viable. There is simply no rational correlation between the Rexco operations, which are indistinguishable

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2/ It should be noted that an extremely limited number of REA's authorities are limited to specific commodities such as baby chicks (Sub-No. 2339), milk and cream, and milk and cream containers (Sub-No. 435), and express matter (Sub-No. 394). Rexco, incidentally, has embargoed all such specific commodities.

from those conducted by ordinary irregular-route motor common carriers, and a true express service with its attendant unique features. Thus, by no stretch of the imagination can it be claimed that the Rexco operations have served to preserve REA's express service.

Also, complainants will demonstrate there is no remaining need for the preservation of REA's "hub" temporary authority which, as REA itself has pointed out to the Commission, is hopelessly inefficient and outdated. REA's long-threatened demise is a reality. This fact should be recognized by all concerned as forming the backdrop against which this case must be heard. Furthermore, REA's demise, which officially occurred on November 7, 1975, apparently did not have a detrimental effect on the market. 3/

This stems from the fact that long prior to November 1975, REA's services had begun to detriorate for a number of reasons and other companies had begun to provide the services which REA increasingly failed to provide.

3/ This, of course, recognizes that Rexco still operates. However, the Rexco operation is no different than that of thousands of irregular-route carriers which specialize in truckload, call-on-demand operations. The only difference between such operations is that Rexco's competitors obtained their certificates after fully informing the Commission of their intent to conduct such operations. Rexco, however, does not share such a legitimate past. Rather, the REA certificates were obtained under the premise that they would be used to solve the "small shipments" problem. While that may have been true at one time, there is no rational way to reconcile REA's applications which the Commission granted with the operations being presently conducted by Rexco.

As to those limited remaining express services which REA was providing at the time of its demise in November 1975, it appears that the shipping public has apparently found other means for moving this traffic. The demise of REA did not, as had often been predicted by REA in its applications,[4/] create a chaotic situation in the transportation industry and thereby work to the great detriment of shippers all over the country. Indeed, a number of carriers quickly moved to fill the practically nonexistent void created by REA's demise.[5/]

This basic fact serves to negate any basis for a possible finding that there is a continuing immediate and urgent need for REA's service. In order words, there is no longer a valid basis for finding that the statutory criteria of Section 210a(a) have been satisfied. Therefore, REA's outstanding temporary authorities should be cancelled.

Finally, it is respectfully submitted that to permit any party to substitute itself as application in REA's long dormant application is an exercise in futility.

4/ See Docket No. MC-66562 (Sub-No. 2308 TA), Statement of Facts accompanying the application, p. 5; Docket No. MC-66562 (Sub-No. 2337 TA), Statement In Support Of Application Of REA Express, Inc. For Irregular Route Authority, p. 12.

5/ See Appendix 1. A further indication of the lack of problems encountered was the experience of the National Small Shipments Traffic Conference which installed a "hot line" to help shippers with small shipments problems resulting from REA's demise. After 10 months, the line was dicontinued because of inactivity. Ineeded, only 22 calls were ever received relating to the small shipments problem. See Attachment No. 5 to Appendix 1.

REA's reduction of the quality and scope of its service in recent years, as well as the total cessation of its express operations since November 7, 1975, have taken their toll. There is simply no reason to assume that there is a need for a successor to REA's nationwide express service. Nor is there any reason to believe that any such successor could successfully operate within the confines of REA's authorities, especially in view of REA's repudiation in 1971 of the hub configuration as inefficient and uneconomical.

In short, the history of the gradual decline and final demise of REA, despite the continued assistance of the Commission, demonstrates conclusively that the time and need for REA's express service has passed. REA in all its manifestations should be left to lie in peace.

II.

BACKGROUND

As has been pointed out by REA on several occasions,[6/] REA, in one form or another has provided a transportation service since the 19th century. Although it apparently used wagons in its earliest days, by the early part of this century it came to be owned by the railroads and operated as their exclusive agents. During this period REA relied primarily on the railroads for carriage using the then well-scheduled passenger trains to transport its express shipments.

As passenger train service was discontinued to the smaller towns, REA turned to trucks to replace the former rail line-haul movements.[7/] This, of course,

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6/ See e.g., Reply of REA Express, Inc. to the Protests of Various Motor Carriers and Their Associations, Docket No. MC-66562 (Sub-No. 2337) dated April 21, 1971, at p.3; Petition of REA Express, Inc. for Reconsideration, Docket No. MC-66562 (Sub-No. 2337), dated June 11, 1971, at p. 17; and Memorandum of the Trustee in Opposition of the Motion of Illinois-California Express Co., Inc. and Western Gillette Transportation, Inc. to Vacate This Court's Order of December 8, 1975, filed in Bankruptcy No. 75-B-253, In the Matter of REA Express, Inc., f/k/a Railway Express Agency, Inc., U.S.D.C., S.D.N.Y., at pp. 1-2.

7/ As discussed in the Kearny Report, which accompanied REA's application in Docket No. MC-66562 (Sub-No. 2337), p. 3: REA's acquisition of motor vehicle operating authority began in the 1930's when the ICC required REA to obtain motor vehicle operating authority for its operations. This authority was obtained to replace discontinued rail service. As the railroads continued to drop rail passenger service, REA continued to secure motor vehicle operating authority as a substitute (there was literal substitution of truck for rail, as REA's motor vehicles were operated similarly to railroad passenger train service, including scheduled arrivals and departures, drivers associated with the seniority
(footnote continued on page 8)

necessitated its filing for appropriate certificates of public convenience and necessity. Since REA merely substituted truck service for the discontinued rail service, the great majority of its early certificates do not connect major commercial centers. Moreover, they are extremely limited geographically. Most importantly, there is absolutely no rhyme nor reason to these certificates from an operational viewpoint. Nevertheless, by 1962, as noted by this Commission in REA Express, Inc., Application for ETA, 117 M.C.C. 80, 82 (1971), REA possessed nearly 1,700 of these motor carrier operating authorities. Apart from these geographical problems, REA's motor authorities were, and are to this day, subject to several important restrictions.[9] As explained, id., at p. 82:

8/ (cont'd)
districts of the Brotherhood of Railway Clerks, bid runs, 100-mile compensation, etc.). The authority that resulted from truck-for-rail substitution is the basis of REA's present permanent authority which generally allows REA to provide short-haul transportation over fixed routes between the old major passenger train terminals and nearby towns and rural areas.

9/ As discussed in REA Express, Inc., Application for ETA, supra, 117 M.C.C. at 82-83, the Commission in dictum in Railway Express Agency, Incorporated, Extension-Cheneyville, Ill., 53 M.C.C. 807 (1952), stated in effect that REA could utilize its certificates issued to enable motor substitution for rail service as though the rail movement actuallly had taken place. Thereafter, REA quickly expanded into the all-motor field by expanding its rail-restricted certificates with its nonrail-restricted certificates. In 1962, however, the Commission reversed the Cheneyville dictum in Railway Express Agency, Inc., Extension-Nashua, N.H., 91 M.C.C. 311, 331-334 (1962), but at the same time, id. at 333-334, invited REA to file an appropriate petition seeking the removal of all existing "rail-haul" restrictions. Such an application was filed and REA was authorized to continue its all-motor configuration pending determination of the so-called Modification case.

> During the "pre-Nashua" period, all of REA's operating authorities were limited, in some manner, to the performance of service which is auxiliary to or supplemental of air or railway express service. Additionally, REA's authorities were limited to the transportation of shipments moving on through bills of lading or express receipts, and many were restricted to the transportation of shipments having a prior or subsequent movement by rail. This last restriction followed from REA's pattern of seeking motor carrier authority paralleling discontinued rail service, and to be performed as a substitute for such formerly used rail transportation. The routes granted for this reason normally were relatively short.

In addition, unlike the certificates issued to ordinary motor carriers, all of REA's certificates, and temporary authorities, are restricted to the transportation of commodities "moving in express service, over regular routes." This, of course, was in recognition of the unique transportation role that REA was intended to fulfill and served to differentiate REA's service from that being rendered by the rest of the trucking industry. As will be shown, the present operations being conducted by Rexco do not satisfy any of these criteria.

THE HUB APPLICATION

Apparently in recognition of the fragmented nature of its authorities, REA's management came to the Commission in 1968 with a new plan of operations. This

plan, which is known as the "Hub Authority,"[1] was glowingly described by REA's management as "the only permanent solution" to REA's financial and operational problems.[2] Since the hub authority represents REA's only attempt to bring order out of the chaos engulfing its motor carrier operations, and since the hub is the only existing nationwide motor carrier authority held by REA,[3] it is necessary to keep several important facts firmly in mind. First, the hub authority is temporary in nature since, as will be discussed at length, REA's management subsequently repudiated the hub concept and applied for other authority. The management did not, however, take steps to cancel the hub temporary authority nor did it seek to prosecute the outstanding permanent application.[4]

1/ The "hub" application was docketed as MC-66562 (Sub-No. 2308 TA). The pending permanent application was docketed as MC-66562 (Sub-No. 2314), now (Sub-No. 2345, Part No. 181).

2/ See the "Statement of Facts" accompanying REA's temporary authority application in 2308 TA at p. 9.

3/ While REA claims to be a nationwide express company, it should be kept in mind that until the hub application REA could not provide a nationwide motor carrier service. Furthermore, even with the hub it could not claim to offer such a service since several of the hubs were not connected except by rail. For example, the hub system does not connect Atlanta with any of the other hubs by motor routes except Jacksonville, Florida. Thus, the only conclusion to be drawn is that REA was a nationwide carrier only to the extent that it could associate itself with the railroads for its line-haul movements.

4/ As a result, no showing of public convenience and necessity has ever been made with respect to a present and future need for a nationwide motor carrier express company.

Second, from a physical standpoint, the hub authority is a combination of REA's permanent authority, its existing temporary authority and temporary authority applied for in the hub application to fill in the gaps between the previously held authority. For example, Route 9-17 of the hub between Washington, D. C., and Raleigh, North Carolina, is composed of three segments:

(1) Sub 2262 TA, from Washington, D. C., to Richmond, Virginia, over Interstate 95 and return over the same route;

(2) Sub 1369, from Richmond, Virginia, to Petersburg, Virginia, over U.S. Highway 1-301 and return over the same routes; and

(3) A request under the hub application for authority to operate between Petersburg, Virginia, and Raleigh, North Carolina, over a specified route.

Thus, under the hub, REA can operate between Washington, D. C., and Raleigh, North Carolina. If, however, REA's temporary authorities were removed from the picture, REA would only be permitted to operate between Washington, D. C., and Richmond, Virginia. As a careful review of the hub application will reveal, this situation is repeated throughout the United States. Indeed, without the temporary authority granted solely as a result of the hub application, a map of REA's authorities would resemble a fragmented web lacking any

cohesive features and certainly could not be considered a "nationwide" motor carrier express service.

The hub operation, as explained both in REA's application and in its subsequent applications in which the hub concept was repudiated, consisted of 24 major commercial centers, the so-called "hubs." The hubs were connected with each other by a series of designated regular routes and by rail routes. As previously noted, p. 11 at footnote 3, Atlanta was not connected by a highway route with any of the other hubs except Jacksonville, Florida. Likewise, Los Angeles and Oakland, while connected with each other by highways, are not connected with any of the other hubs except by rail line hauls.

Other hubs, such as Boston, Massachusetts, and New York, New York, were to be connected by highways as part of the hub system. As an example of the fragmented nature of REA's existing authorities, it should be noted that REA had to ask for new authority to be granted between these two commercial centers as part of the hub application since it lacked existing motor carrier authority to operate between them.[5/] Thus, for example,

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5/ Of the 51 regular routes comprising the hub-to-hub system, only 6 are composed wholly of permanent authority. For example, Route H2-5 is REA's existing Sub 1569 which authorized operations connecting Albany, New York, and New York, New York. On the other hand, 37 of the routes encompass regular routes over which REA lacked any authority prior to the hub application. The remaining 8 routes contain temporary authority such as route H1-5 between Boston and New York which has as one segment REA's Sub 1981 TA.

the route between Boston and New York consisted of two segments:

(1) Sub 1991 TA, from Boston, Massachusetts, over Southeast Expressway to junction of Massachusetts Highway 128, thence over Massachusetts Highway 128 to junction of Interstate Highway 95, and return over the same route; and

(2) A request under the hub application for authority to operate from junction of Massachusetts Highway 128 and Interstate Highway 95 over Interstate Highway 95 to the junction Rhode Island Highway 3, thence over Rhode Island Highway 3 to junction Interstate Highway 95, thence over Interstate Highway 95 to New York, New York, and return over the same route, serving the junction Massachusetts Highway 128 and Interstate Highway 95 for purpose of joinder.

In addition, REA proposed to serve the areas surrounding the hubs through a series of described regular routes. These outlying points were called "satellite" points. Thus, for example, to serve Martinsburg, West Virginia, REA set up route 9-36, which is composed of three segments:

(1) Sub 1085, from Washington, D. C., over U.S. Highway 29 to junction Virginia Highway 7, thence over Virginia Highway 7 to Purcellville, Virginia. Service authorized at the intermediate points of Herndon and Leesburg, Virginia.

(2) A request under the hub application for authority to operate from Purcellville over Virginia Highway 7 to Winchester, Virginia, and return over the same route serving the intermediate point of Berryville, Virginia.

(3) Sub 946, from Winchester, Virginia, over U.S. Highway 11 to Martinsburg, West Virginia, and return over the same route.

Taken on interhub basis, a shipment moving from one satellite point would move to its hub, where it would be consolidated with other shipments and then move to the next hub. From the hub the shipment would be dispatched to the satellite destination point. For example, a shipment moving from Martinsburg, West Virginia, to Syracuse, New York, under the hub authority would move from Martinsburg to Washington, D. C, over route 9-36. From Washington, D. C., it would move to New York, New York, over H5-9 and from New York, New York, to Ablany, New York, over H2-5. Thence from Albany, New York, to Syracuse, New York, it would move over route 2-10.

What REA's management failed to consider, however, was the fact that this system often created needless backhauls. As the above example shows, a shipment moving from Martinsburg, West Virginia, to Syracuse, New York, without going through the appropriate hubs would have fewer miles to travel, especially since it could move directly over Interstate Highway 81. Thus,

what REA's managment repeatedly described as the "only solution" in its application,[6/] proved to be yet another albatross around its neck.

Confronted with the fact that the hub was not proving to be the panacea it was represented to be, REA's new management returned to the Commission in 1971 and in two separate applications sought motor carrier, nonradial, irregular-route authority between all points in the United States. In the "Statement of Support of Application of REA Express, Inc. for Irregular Route Authority" that accompanied its application in MC-66562 (Sub-No. 2337 TA), at p. 2, REA claimed that the hub system "has proved to be both costly and inefficient for REA and inadequate in providing service to the public." Furthermore, at pages 3 and 4 of this statement, the defects associated with the hub authority were outlined. As the new management viewed the matter, the defects centered around two things: (1) the excessive reliance upon rail TOFC "piggyback" service; and (2) the structure of the hub authority with its "back hauls" from a hub to a satellite terminal.

The Commission, however, by its Order served May 12, 1971, denying the 2337 TA application, and its Report and Order served December 7, 1971, denying the subsequent R-471 emergency temporary authority application,

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6/ See Statement of Facts accompanying application in Docket No. MC-66562 (Sub-No. 2308 TA), at pp. 7, 9 and 10.

denied REA's requests for nonradial, irregular-route, motor carrier authority. As a result, REA presumably continued to operate under the hub configuration until November 7, 1975, when it embargoed all shipments.

III.

THE REXCO OPERATIONS ARE NOT IN COMPLIANCE WITH STATUTORY AND COMMISSION REQUIREMENTS AND SHOULD BE FOUND TO BE ILLEGAL

One of the major issues in this proceeding is whether the Rexco operations satisfy the requirement in REA's outstanding certificates of public convenience and necessity and temporary authorities that REA's service be limited to the transportation of general commodities "moving in express service over regular routes." It is Complainants' position that the Rexco operations fail to satisfy these requirements. Complainants also contend that the Rexco operations are otherwise in violation of applicable Commission and Department of Transportation requirements. On the basis of these violations, the Commission should immediately order REA and its Rexco Division to cease and desist from all operations that are a subject of these complaint proceedings.

The Rexco Division of REA was established in the Spring of 1975 and commenced operations in August 1975. From the outset Rexco made no attempt to keep within the traditional framework of REA's express operations. Instead, as explained by Mr. Williams, the Manager of Rexco:

> As a division of REA Express, Inc., REXCO will operate independently of the parent company. There is neither requirement nor necessity for REXCO to maintain terminals. REXCO will not provide platform services, assembly or pickup services, etc., nor will REXCO at any time utilize the facilities or

personnel of REA Express, Inc. in field operations.7/

As will be shown, this "independent" operation is nothing more than a deliberate, willful attempt, based on little more than isolated sentences in various Commission reports, to expand illegally into a field of service for which no need has ever been found for REA's service. Furthermore, these "independent" operations, which have resulted in numerous violations of the Commission's rules and regulations, are being conducted in such a manner as to be in open, willful defiance of the Commission's explicit decision not to permit REA to institute an irregular-route, point-to-point service in REA Express, Inc., Application for ETA, 117 M.C.C. 80 (1971). Thus, for example, its sales agents were never provided copies of Rexco's authorities permitting operations. As the former sales agent at Portage, Indiana, has stated, "I was never provided with any listing of authorized points or any other material which could have been used to determine whether the REA authority permitted service to a particular customer or destination." Also, several agents, in response to

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7/ See Affidavit attached as Exhibit No. 1 to the Reply to Protests in Suspension Board Case No. 63240. A copy is attached hereto as Appendix 2.

8/ See Appendix 3, p. 6.

similar requests, received a map of the United States with a line drawn through Denver along with the advice that they could solicit traffic destined to any point east of the line.[9/] In addition, Rexco never informed its sales agents that REA's authorities were regular route and that the drivers would have to follow these authorized routes.[1/]

In other words, no legitimate attempt was ever made to confine Rexco's service to those points which REA was authorized to serve, or to limit its operations to authorized highways. While the Trustee has objected to the fact that complainants have developed evidence concerning some of Rexco's service to such points and over unauthorized highways, it is respectfully submitted that Rexco and REA are operating in a regulated industry and are, therefore, limited in the service they can provide, especially in their all motor configuration, by the authorities granted by the Commission and by their published terminal areas.[2/]

9/ See Appendix 3, p. 6; Appendix 4, p. 3; Appendix 5, p. 3; and Appendix 6, p. 3; Appendix 7, p. 2; and Appendix 8, p. 2.

1/ See Appendix 3, pp. 7-8; Appendix 4, p. 3; Appendix 6, p. 3; Appendix 7, p. 2; and Appendix 8, p. 3.

2/ Although the Trustee attempts to brush aside the unauthorized operations to these points by contending that they are small and insignificant, such an argument is patently specious. In the first place, as the Trustee well knows, REA has authority to serve most of the large commercial centers. Thus, Complainants were forced to find smaller points. Second, and more important, the fact remains that Rexco served the points without first carefully determining whether authority existed. It was only after Complainants called attention to the lack of authority that Rexco ever attempted to find the underlying REA rights.

Finally, the Rexco operations are being conducted in willful disregard of the long line of well-established Commission decisions defining the characteristics of a true express service. As will be shown, there is absolutely no way that Rexco's operations can be characterized as "express" within the Commission's definition of that term. Therefore, they do not fall within the scope of REA's authorized operations.

A. THE COMMISSION'S DEFINITION OF "EXPRESS SERVICE"

While avoiding a hard and fast approach in defining express service as used in REA's authorities, the Commission has nevertheless "thought of express service as connoting certain distinct charateristics."[3/] Thus, the Commission has defined this service in terms of its "uniqueness," and has emphasized that it entails something different than "ordinary" freight service.[4/] As explained by the Commission in Railway Express Agency, Inc., Extension - Nashua, N.H., 91 M.C.C. 311, 324 (1962):

3/ Railway Express Agency, Inc., Extension - Nashua, N.H., 91 M.C.C. 311, 322 (1962).

4/ See e.g., Railway Express Agency, Inc., Extension - West Unity - Middletown, 31 M.C.C. 363, 371 (1941); Railway Express Agency, Inc., Extension - Durant - Kosciusko, 34 M.C.C. 111, 114 (1942); Railway Express Agency, Inc., Extension - Mount Airy, 31 M.C.C. 343, 350 (1941). Also see Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573-579 (1955), and Express Company Terminal Areas, 332 I.C.C. 91, 105 (1967).

> . . . this Commission has always intended the term "express service" to mean generally the expedited handling of small-parcel traffic which common carriers of ordinary freight do not desire usually or are not able to perform. It is a service superior to that rendered as a rule by common carriers of general freight, and thus requires the payment of premium charges.
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> From this view it follows that "express service" is not susceptible of precise definition because it is, by its very nature, a service whose attributes of expediency, premium rates, and special handling of freight must be judged in comparison with the services and rates provided and assessed usually by common carriers of ordinary freight.

At the same time, however, the Commission has taken pains to develop a framework within which express service must exist. In what is probably the most comprehensive analysis of this issue, the Commission in Transportation Activities of Arrowhead Freight Lines, Ltd., 63 M.C.C. 573, 575-582 (1955), explored at length the basic criteria of a bona-fide express service. These criteria were then summarized as follows:

> Summary.--Succinctly stated the rendition of a bona-fide express service by property carriers with authority to transport general commodities requires such carriers (1) to provide a bona fide holding out together with the ability to transport any commodity which may be safely transported in ordinary van-type equipment, including those requiring a maximum degree of care or security or both, (2) to provide such care or security or both as the inherent characteristics of the commodities making up the shipments which are accepted may require, (3) to provide equally expeditious transportation and careful handling for all accepted shipments,

> regardless of their volume, special demands, or value, from the point of pickup to the point of delivery, (4) to perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins and which in practice are not changed except after substantial notice to the general public, and, (5) to use relatively simple billing, rate structures, and rate publications whereby the rates and charges for the services offered and performed may easily be determined with a minimum of delay.

In addition, the Commission further noted the relationship of "premium" rates to express service, id., at 582:

> It is readily apparent in the foregoing summary that express carriers provide additional services under less favorable operating conditions than do carriers providing ordinary freight services. In the circumstances it follows that the level of their rates for express service is necessarily higher. The fact that express carriers, charging premium rates, are able to compete with and survive the competition of the carriers providing an ordinary freight service confirms the higher type of service expected of, and supplied by them. Thus while premimum rates are, of course, not part of the service of express carriers they nevertheless are an attribute of such service without which it is unlikely that any service should be so classified. On this point in the prior report . . . [61 M.C.C. at 140]:
>
> it would appear that carriers providing express service should not establish the same or substanially the same rates as carriers of general freight. On the contrary their premium service should be bona fide premium-priced if its character as such is to be above challenge.

The Arrowhead case principles were subsequently reaffirmed by the Commission in both the Nashua case (91 M.C.C. at 322-327) and RFA Express, Inc., Application for ETA, 117 M.C.C. 80, 88-89 (1971). Furthermore, in Nashua the Commission specifically removed any doubts whether its holding in Arrowhead applied with full force to REA's certificates when it concluded, 91 M.C.C. at 326-327:

> It is clear that the Arrowhead and Misletoe interpretations represent no reversal of any prior conclusions; are exemplary of conditions that have existed since the inception of transportation by motor vehicle of express; and are illustrative of the meaning of the term "general commodities moving in express service" as we have always intended it to apply in certificates issued by us.
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> * * *
>
> In summary, we believe that the existing definitions of "general commodities moving in express service," or similar terms, are a realistic and practical reflection of the nature of express service as it has always been conceived of by us; apply with full force to REA's certificates; and have not been shown to be in need of alteration or change at this time.

The final case to be considered is REA Express, Inc., Application for ETA, supra, 117 M.C.C. 80. There, in denying REA authority to restructure its operations into an irregular-route express service, the Commission reasoned (117 M.C.C. 88-80) as follows:

> In the REA temporary authority application* which immediately preceded the instant application, we noted that "irregular route"

service would be inconsistent with express service. The basic indicia of express service have been set forth in previous Commission reports.[19] One index of express service is that the carrier must perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins which in practice are not changed, except after substantial notice to the general public. In essence, this means that express service, whatever else it may be, must be performed an an expedited, regular-route service. Such serice is operationally inconsistent with irregular-route service which, in the usual concept, envisions a "call-on-demand," unscheduled operation. This same issue arose in the Nashua case and, beginning at page 322, it was discussed at some length. Thus, REA has been well advised that its basic proposal contains inconsistent terms and yet we still have not been presented with a rationalization for the inconsistency or any reason for this Commission to modify its previous standard of express service.

If REA is to forego completely its regular-route operations, it well may be that it will devolve into no more than an ordinary motor common carrier of small shipments, and cease to exist as an express company. Should this be the case, REA, as a motor common carrier, could not avail itself of express company terminal areas, but would be limited to those permitted carriers of its new status. The effect of this upon REA's operations cannot be determined upon the record before us.

*Footnote ommitted.

19 Transportation Activities of Arrowhead Freight Lines, 63 M.C.C. 573, 581 (1955).

B. THE EVIDENCE DEMONSTRATES CONCLUSIVELY THAT THE REXCO OPERATIONS ARE IN WILLFUL VIOLATION OF THE TERMS OF REA'S AUTHORITIES

It is respectfully submitted that the Rexco operations do not satisfy the basic criteria of a bona fide express service. Therefore, they do not fall within the scope of REA's authorized operations and are thus in violation of Sections 203(b) and 206(a)(1) of the Act.

In the first place, as observed by the Commission in REA Express, Inc., Application for ETA, supra, 117 M.C.C. at 89:

> [O]ne index of express service is that the carrier must perform actual operations between all authorized points upon firmly established schedules allowing minimum practicable highway transit time and providing fixed delivery times which are available to actual and potential shippers at authorized origins which in practice are not changed, except after substantial notice to the general public. (Emphasis in original.)

Rexco's operations satisfy neither of these criteria.

Initially, Rexco does not operate upon any firmly established schedules. As various Rexco sales agents have testified, they did not schedule pickups or deliveries.[5/] Neither did they have any regularly scheduled trips. Instead, it has been testified that Rexco operates only a call-on-demand service.[6/]

5/ See Appendix 3, at p. 6; Appendix 4, at p.7 ; Appendix 5, at p. 4; Appendix 6, at p. 4; Appendix 7, at p. 2; and Appendix 8, at p. 3.

6/ See Appendix 3, at p. 6; Appendix 4, at p. 8; Appendix 5, at p. 3; Appendix 6, at p. 4; and Appendix 8, at p. 3.

If there were drivers available at the time loads became available, and they were willing to make the haul,[7/] then they were given the load. As the agents have also testified, Rexco equipment frequently was not available; therefore, they were unable to meet their commitment.[8/]

This situation, of course, stems from the fact that Rexco, unlike REA, does not own any equipment. Furthermore, aside from four owner-operators who were on long-term leases,[9/] Rexco does not employ any regular drivers. Instead, the owner-operators drive exclusively pursuant to trip leases and back-to-back trip leases.[1/]

7/ Because of Rexco's depressed rates, the sales agents often found it difficult to induce drivers to take the load (Appendix 29, at p. 2, and Appendix 5, at p. 2). Instead, they frequently found that drivers would prefer to wait several hours for a load which would generate more income than the Rexco load. This very situation prompted the Supreme Court in American Trucking Associations, Inc. v. United States, 344 U.S. 298, 305 (1953), to observe that "[t]he carrier engaged in leasing practice is at the mercy of the cost and supply of exempt equipment available to him. Hence, he may at times find himself unable to undertake shipping obligations because no trucks are available willing to make a relatively unprofitable trip or to assume the burdens of less-than-carload service." This inability to guarantee a truck further dispels any idea that Rexco was offering either a scheduled or expedited service.

8/ See Appendix 3, at p. 5; and Appendix 4, at p. 6.

9/ During the initial discovery Complainants' attorneys were advised by REA officials that only four long-term leases were ever in existence. They apparently terminated when REA was adjudicated a bankrupt.

1/ Complainants' argument concerning the alleged illegality of this arrangement is found infra, at pp. 44-50.

As a result the Rexco sales agents seldom know when to expect a driver and must, therefore, continuously recruit drivers from local truck stops. This situation is further aggravated by the fact that Rexco has no central dispatch unit which keeps track of the location of its drivers. All of these facts finally lead to the irrebuttable conclusion that Rexco's service utterly fails to satisfy the "firmly established schedule" requirement.

Second, Rexco also fails to satisfy the related criterium that the carrier must perform actual operations between all authorized points. In the first place, Rexco has not attempted to provide actual operations between all of REA's authorized points. Instead, it has abandoned all service at most of REA's authorized points and instead has concentrated its efforts on a number of shippers which generate truckload traffic. Thus while Rexco will pick up for a shipper at any given point that has a truckload shipment, it will refuse service to a small shipments shipper next door. Second, because of the call-on-demand type service being offered, the fact that Rexco may have a truck at a specified point on one day is no guarantee that another one will ever reappear. Furthermore, since Rexco admittedly does not operate any terminals[2/] or similar facilities or own any vehicles, it is simply not in a position to guarantee that any service will be provided at any given point.

2/ See Answers To Interrogatories Submitted On Behalf Of Rexco, Inc. and REA Express, Inc., dated March 17, 1976, at p. 3.

Third, Rexco has made no attempt to confine its operations to the regular routes authorized by the Commission. Instead, its drivers are left to take whatever route they desire. Thus, the Rexco operations violate not only the Commission's orders denying REA the right to conduct irregular-route operations, but also the terms of every certificate and temporary authority held by REA.[3/]

That Rexco conducts irregular route operations is proved by several factors including the fact that the trip leases do not set out the routes to be followed. Instead, the trip leases reflect several different entries on the space designated "via route _____." These entries include "irregular,"[4/] "Rexco,"[5/] "Rexco

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3/ The fact that every authority held by REA sets out in simple English the exact routes that REA, or Rexco, may legally traverse has been deliberately ignored by the Trustee and Rexco. Thus, REA does not, as claimed at page 19 of the "Trustee's Answers To Interrogatories dated August 16, 1976," have prima facie authority to operate over Interstate 80 between Youngstown, Ohio, and Milton, Pennsylvania. Nor does the fact that REA can serve both points carry with it the ability to operate between such points as suggested by the Trustee, id., at page 9. Finally, while the Trustee may consider the portion of Interstate 80 involved herein as only a short segment of that highway, it should be noted that this segment, over which REA is not authorized to operate, is the principal route traversed by the Rexco drivers on movements between the East Coast and the Midwest.

4/ See Contract-Lease Agreement, No. A 30725, dated November 14, 1975, attached as Appendix 9, which is part of Rexco Manifest No. 2140.

5/ See Appendix 10, Attachment No. 1, Rexco Traffic Study, p. 1, Rexco Manifest No. 15

Routes,"[6] "Direct,"[7] "Rexco Direct,"[8] and "Regular Routes."[9] In addition, this space is simply left blank on some leases.

With respect to those leases which contain a "regular route" entry, it is respectfully submitted that such an entry is an obvious sham. Initially, it should be observed that the sales agents were never given any instructions from Rexco conerning the routing of traffic, nor were they provided a copy of REA's authorities.[1] Thus, they were unable to tell the drivers anything. Furthermore, the drivers' logs associated with such entries will show that they did not operate over any pattern of regular routes.[2] In addition, they often traversed highways over which REA lacked authority to operate.[3] Also, several of the sales agents have testified that drivers were never given specific

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6/ Ibid., Page 1, Rexco Manifest No. 17.

7/ Ibid., Page 4, Rexco Manifest No. 451.

8/ Ibid, Page 6, Rexco Manifest No. 1450.

9/ Ibid., Page 4, Rexco Manifest No. 164.

1/ See Appendix 3, p. 7; Appendix 4, p. 3; Appendix 5, p. 3; Appendix 6, p. 3; Appendix 7, p. 2; and Appendix 8, p. 2. Furthermore, several agents have testified that they were told they could provide service to any point in the United States east of Denver. See Appendix 3, p. 6; Appendix 4, p. 3; Appendix 5, p. 3; Appendix 6, p. 3; Appendix 7, p. 2; and Appendix 8, p. 2.

2/ See Appendix 10, Attachment No. 1, Rexco Traffic Study.

3/ See infra, at pp. 43-44.

routing instructions.[4/] Instead, they were simply told where to make the delivery and it was left to their discretion as to how they would proceed.

Furthermore, it should be noted that the drivers were paid on the basis of the direct mileage between origin and destination reflected in the Household Goods Carriers' Bureau Mileage Guide. Also, freight charges were likewise computed on this basis. Therefore, a driver that would have followed the regular routes authorized by REA's certificates, had they been made known to the driver, would have penalized himself. This method of payment thus assured the drivers' observance of the most direct route even though REA or Rexco could not legally operate over the direct route.

Fourth, the Rexco operations violate the requirement that an express carrier hold itself out to provide equally expeditious transportation services for all accepted shipments, regardless of their volume. While the Commission deliberately refused to permit a maximum weight restriction to be placed on REA's certificates on the theory that an express carrier should be in a position to offer its expedited service to a shipper that needed such service and was willing to pay a premium rate for its volume traffic,[5/] the Commission

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4/ See Appendix 3, p. 7; Appendix 4, p 8; Appendix 6, p. 3; and Appendix 7, p. 2.

5/ See Freight All Kinds, L.C.L. Container Charges - U.S.A., 323 I.C.C. 468 (1964); Railway Express Agency, Inc., Extension - Chicago - Cincinnati, 98 M.C.C. 92 (1965); Railway Express Agency, Inc., Extension - Traverse City, Mich., 96 M.C.C. 727 (1965).

nevertheless recognized an express service to be one that directs its primary interest and effort to the transportation of relatively small shipments.[6/] Thus, the Commission in Railway Express Agency, Inc., Extension - Chicago - Cincinnati, 98 M.C.C. 92, 99 (1965), took the position "that the commodity description 'general commodity moving in express service' is sufficient to limit applicant's operations to its normal range." Furthermore, in the Nashua case, 91 M.C.C. at 324, the Commission unequivocally stated that it "has always intended the term 'express service' to mean generally the expedited handling of small-parcel traffic which common carriers of ordinary freight do not desire usually or are not able to perform."

Rexco, however, has chosen to disregard the Commission's long-standing requirements in this regard and has deliberately obliterated all vestiges of its small shipments service. In addition to embargoing the specific commodities noted above, Rexco has limited its holding out to exclusively truckload shipments. Unlike the previous tariffs of REA, such as REA Express, Inc. Class Tariff 18-S, I.C.C. 148, which established a scale of rates for shipments weighing 1 to 25 pounds,[7/] the

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6/ Transportation Activities of Arrowhead Freight Lines, supra , 63 M.C.C. at 579.

7/ See REA Express, Inc. Class Tariff 18-S, I.C.C. 148, effective March 12, 1975, page 1 and 4. A copy of these pages is attached hereto as Appendix 11.

Rexco Commodity Tariff 85 establishes a scale of rates with a minimum weight of 16,000 pounds.[8] However, this 16,000 pound minimum is one of form and not of substance.[9] As this scale of minimum weights proves, Rexco deliberately intended to embargo the small shipments traffic. In addition, as shown by the testimony of several of the Rexco sales agents, Rexco directed its agents not to solicit LTL traffic.[1] As a result of these activities, the average weight of the shipments handled by Rexco that are included in the traffic survey attached to

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8/ See Appendix 12 for a true and correct copy of the original Rexco Commodity Tariff 85, I.C.C. No. 153.

9/ To illustrate this, a multiplication of the charges in the various columns by the indicated weight clearly shows no difference between the ultimate charges assessed for a shipment weighing 16,000 pounds and that for shipments rated at 40,000 pounds. For example, the charges assessed for transporting two shipments of Toilet Preparations, weighing 16,000 and 40,000 pounds, respectively, a distance of 500 miles would be exactly the same. Item 1120 of the 85 Tariff directs that the rate in column 8 of Item 1500 shall apply to shipments having a minimum weight of 16,000 pounds. Likewise, the same item directs that column 1 rates shall apply to shipments weighing 40,000 pounds or more. Multiplication of the column values show that the charges for both of these movements would be $392. In the rare instances where the two products are dissimilar, they are dissimilar only because fractions of cents are not provided in the column. This tariff is nothing more than a truckload tariff that only provides charges for shipments rated at 40,000 pounds. Thus Rexco has perpetrated yet another fraud on the Commission by cleverly designing a tariff that on its face gives the appearance that they are providing more than just a restricted truckload service.

1/ See Appendix 3, p. 3; Appendix 4, p. 4; Appendix 7, p. 1; and Appendix 8, p. 2.

Appendix 10 is 34,605 pounds. This fact alone substantiates the contention that the Rexco operations are nothing more than a deliberate, unlawful attempt to alter the character of the service being provided under the REA express certificates. It also belies any suggestion that Rexco is holding itself to provide expeditious service for all shipments regardless of volume.

Fifth, the Rexco operations do not satisfy the oft-stated requirement that express carriers provide practically an unrestricted holding out commoditywise, especially for small shipments of delicate and fragile commodities and articles of unusual value.[2/] Despite this requirement, Rexco Commodity Tariff 85, I.C.C. No. 153, contains a specific list of commodities on which "rates and charges named in this tariff will not apply."[3/] This list contains no less than the backbone of REA's traditional express service[4/] since included among the embargoed items are the following items:

2/ See Transportation Activities of Arrowhead Freight Lines, supra, 63 M.C.C. at 580.

3/ See Appendix 12, at p. 10.

_/ In addition to the list of commodities at p. 2 of the "Statement of Facts" accompanying REA's hub authority appliation, see Railway Express Agency, Inc., Extension-Nashua, N.H., 91 M.C.C. 311, 315 (1962) where it was stated by the Commission that "REA holds itself out to transport all commodities, in any form tendered, covered by its tariff publications, and it has been called upon over the years to handle merchandise of every description, including items such as foodstuffs, seafood, fresh meats,
(footnote continued on page 36)

(a) Live Animals, Birds or Fish;

* * *

(e) Perishable Products requiring protection from heat or cold, unless specifically noted as being acceptable in individual items named in this tariff;
or

(f) Shipments containing any of the following articles:

Antiques or Collectors Items
Art Works
Bank Books
Bills of Exchange
Bonds
Bullion or Precious Metals
Cigarette Lighters
Coins, Copper, Nickel, Rare, Silver or Gold
Cremated and Human Remains
Currency, Paper
Deeds
Diamonds and other precious stones
Dore Bullion
Drafts
Evidence of Debt
Explosives, Class A
Firearms, All Types including Handguns
Fur Trimmed Clothing
Furs
Gems, Cut or Uncut
Gold Alloys
Gold Bullion
Gold Cyanides
Gold Dust
Gold Sulphides
Gold Sweepings
Jewelry
Money
Mortgages
Narcotics and Narcotic Drugs
Negotiable Paper
Notes
Paintings
Pearls
Platinum
Precious Metals (Gold, Platinum, Iridium, Silver, etc.) Articles Manufactured of Precious Metals, Findings, Sweepings or in any other form
Precious Stones
Promissory Notes
Securities
Silver Alloys
Silver Bullion, Coined, Uncoined, Concentrate, Cyanides, Precipitates, Sulphides, Alloys or Sweepings
Silver Sweepings
Stamps, Merchandise Postage or Revenue
Stock Certificates
Travelers Checks

Valuable paper as listed in Items 2735 thru 2810 of the Governing Classification (See Item 10)	Vouchers Watches, Watch Cases, Watch Works and/or Watch Bands

Sixth, Rexco has not attempted to confine its operations to those utilizing ordinary van equipment as has long been required by the Commission. See e.g., Railway Express Agency, Inc., Extension - West Unity - Middletown, supra, 31 M.C.C. at 365. Instead, it has actively solicited and transported numerous truckload shipments of iron and steel which, because of their inherent transportation characteristics, cannot be transported on flatbed equipment. In some instances the percentage of shipments moved on flatbed equipment reached as high as 50 percent.[5/]

Here again Rexco's operations are a marked departure from those of REA. In addition to the fact that REA never solicited or hauled truckload shipments of iron and steel,[6/] REA never operated any flatbed

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4/ (cont'd)
drugs and medicines, film, legal papers, jewelry and other valuables, live animals, baby chicks, radioactive material, corpses, live blood, eggs, explosives, commodities which are injurious or contaminating to other lading, and commodities requiring special care and protection. The average weight of the shipment it handles, computed nationally, is approximately 50 pounds.

5/ See Appendix 3, p. 3; Appendix 4, p. 3; and Appendix 29, p. 2.

6/ A review of the Railway Express Agency Incorporated, Official Express Classification 36, I.C.C. No. 8200, reveals that neither "iron" nor "steel" are ever mentioned in either the "Index to Merchandise Classification Articles" or in the "Merchandise Classification Articles."

equipment. As both Mr. Robert Franco, the former Chief Operating Officer for REA's Pacific Region, and Mr. L. R. Howard, Vice President and Regional Manager for Atlanta Region have observed, REA during their years of service operated entirely with van equipment and, therefore, limited its service to those commodities which are generally handled in that type of equipment.[7/]

Seventh, the rate level established by Rexco is far from premium. Indeed, when comparisons are made between the Rexco rates and comparable rates of the Complainants, the Rexco rates prove to be much lower than those of ordinary motor carriers.[8/]

While it is acknowledged that REA has been permitted in recent years, through the publication of aggregate, unit and volume rates to escape a rigid insistence that its rates be premium, the Commission itself has observed that such rates have not basically altered the average weight of REA's shipments or the basic scope of its service. As the Commission noted in Express Company Terminal Areas, 332 I.C.C. 91, 101 (1967), sustained on review sub nom, Northern Freight Lines, Inc. v. United States, 304 F. Supp 536 (N.D.Ga. 1969), aff'd per curiam, 397 U.S. 247 (1970), REA's average weight per shipment only increased from 45 to 51 pounds as a result of these new rates. This slight increase in average weight stemmed from the fact that REA continued to satisfy the remaining express criteria. Thus, the

7/ Appendix 13, at p. 5; and Appendix 14, at p. 2.
8/ See Appendix 15, at p. 8; and Appendix 16, at p. 5.

self-defining aspect of the Commission's interpretation of express service worked to keep REA within the parameters of the express market.

The Rexco operation, on the other hand, has not maintained this delicately balanced equilibrium. Instead, by failing to satisfy the remaining express criteria while simultaneously introducing extremely low rates, Rexco has completely obliterated any basis for concluding that its failure to charge premium rates should be overlooked. In effect, REA has undergone a complete metamorphasis from when it charged a premium rate for what is recognized to be a unique and premium service. Now its sales agents use the cheap rates charged by Rexco as a selling point for what can only be considered an ordinary freight operation.[9/] While Rexco may attempt to justify this by claiming it is merely satisfying the desires of the marketplace for cheap transportation, it should be remembered that the REA certificates were granted on a nationwide basis on the understanding that a particular type of service would be rendered for which premium rates would be charged. To permit them to be used in any other fashion is to countenance rank injustice.

As the various cases that have been cited show, the Commission did not intend to authorize an ordinary

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9/ See Appendix 3, p. 2; Appendix 4, p. 2; Appendix 5, p. 2; Appendix 6, p.2; and Appendix 8, p. 2.

freight service such as that provided by Rexco when it granted REA its express authority. Instead, as these cases prove, the Commission granted REA authority to serve a specialized market that had been allegedly neglected by many ordinary motor carriers.

Furthermore, the long history of REA, as well as the testimony of its past officers that has been presented herein,[1/] conclusively proves that REA was aware at all times of the specialized nature of its authority. Thus, even though REA had volume rates on file, it should be noted that REA, when it did receive a truckload shipment from one of its shippers, turned to existing motor common carriers to move such shipments.[2/] As candidly expressed by Mr. Franco in Appendix 13, "REA did not contemplate truckload movements during the time I was with the firm except for the movement of perishables."

Given the length of time REA and its predecessors held the authority and the experience of its officers in the motor carrier industry, it cannot be claimed that the Rexco operation was launched in ignorance of the built-in restrictions association with "general commodities moving in express service.[3/] There is simply no escaping

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1/ See Appendices 15 and 16.

2/ See Appendices 15, at p. 10, and 17, at p. 7.

3/ It is interesting to note that in Railway Express Agency, Inc., Extension - Newport, Vermont, 84 M.C.C. 435, 437 (1961), REA's predecessor argued "that 'general commodities, moving in express service' are words of art clearly defined by prior Commission decisions."

the conclusion that the Rexco operation is an open, unlawful attempt to subvert the Commission's regulations.

C. THE EVIDENCE DEMONSTRATES CONCLUSIVELY THAT THE REXCO OPERATIONS ARE IN WILLFUL VIOLATION OF APPLICABLE INTERSTATE COMMERCE COMMISSION AND DEPARTMENT OF TRANSPORTATION REQUIREMENTS

While the preceding is limited to a discussion of Rexco's operations in terms of violations of REA's express authorities, Complainants will also demonstrate that the Rexco operations are otherwise in violation of the Interstate Commerce Act and regulations promulgated thereunder and the rules and regulations of the Department of Transportation. The primary Rexco violations to which Complainants wish to call the Commission's attention include service at unauthorized routes, failure to honor route restrictions, improper use of trip leases, various improper tariff practices and driver log violations.

In conducting its operations, Rexco has not limited its services to points authorized by specific motor carrier authorities or by REA's terminal area publications.[4/] In performing such services, Rexco, as a common carrier, has unquestionably violated the provisions of Section 206 of the Act which require all common carriers to have certificates of public convenience and necessity to engaged in interstate commerce. Furthermore, to the extent Rexco is considered an express company by

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4/ If Rexco is not an express carrier, it is not, as the Commission observed in REA Express, Inc., Application for ETA, supra, 117 M.C.C. at 89, entitled to rely on the terminal area publications to expand its authorities.

virtue of its alleged relationship with REA, it has violated the Commission's regulations governing the publishing of terminal areas.

As part of its operations, Rexco has either picked up or delivered shipments either originating at or destined to Hugunot, New York; Elverson and Trumbauersville, Pennsylvania; Fenwick, West Virginia; Stephens City, Virginia; and New London, Texas.[5/] However, as a review of REA's certificates of public convenience and necessity and its outstanding temporary authorities will reveal, REA lacks motor carrier authority to serve these points.[6/] Furthermore, a review of REA's A-4 Terminal Area Tariff, which defines the pickup and delivery limits of REA's express offices, will reveal that REA never included these points within its system. Therefore, even if it is assumed that Rexco can avail itself of REA's express company terminal areas, it still could not legally render pickup or delivery service at these six points.[7/]

5/ See Attachment No. 1 to Appendix 10.

6/ See Appendix 10, at pp. 3-4.

7/ Any questions concerning REA's authority as an express company to publish its own terminal areas wherein pickup and delivery service is to be provided were removed by the Commission's decision in Express Company Terminal Area, 332 I.C.C. 91 (1967). However, as was also clarified by that decision, REA's discretion in defining these areas is subject to Commission review. Id., at 109-110. Furthermore, as specifically noted, id., at 98, one of the principal results of an early commission investigation of express companies (footnote continued on page 43).

In addition, Rexco has repeatedly operated over highways over which REA lacked appropriate authority. Thus, a large percentage of its movements that cross Pennsylvania traverse Interstate Highway 80 between Youngstown, Ohio, and Milton, Pennsylvania. However, a review of REA's certificates and temporary authorities, including the hub authority will demonstrate that REA lacks authority to traverse this highway.[8/] Although Rexco attempted in its "Answer to Interrogatories of May 19, 1976" to claim that the hub authority contained its over-the-road authority, such is not the case. As a review of REA's application in 2308 TA will reveal, at the time the hub application was filed, Interstate 80 did not exist between Milton, Pennsylvania, and Youngstown, Ohio, and was, therefore, not included as a route. Nor did REA at any subsequent time apply to the Commission for authority to traverse over Interstate 80 between these points.

Likewise, Rexco has on several occasions transported shipments destined to El Paso, Texas, over

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7/ (cont'd)
"was the requirement that the geographical limits of the terminal areas in which free pickup and delivery service was to be provided be set out in the express companies' tariffs to give adequate and informative notice to shippers." The case referred to by the Commission is In Re Express Rates, Practices, Accounts, and Revenues, 24 I.C.C. 380, 394-395 (1912). As applied to REA, this required it to publish a tariff setting out a description of its pickup and delivery limits. This publication is REA's A-4, Joint Directory of Pick-Up and Delivery Limits at Express Offices, I.C.C. A-4.

8/ See Appendix 10, pp. 5-6.

Interstate Highways 20 and 10 and U.S. Highway 80, running from Sweetwater to El Paso, Texas.[9/] If REA's authorities are reviewed, it will be shown that it lacks this direct route authority.[1/] Instead, all of REA's motor carrier authority to serve El Paso is limited to movements via New Mexico.[2/] For a more complete discussion of Rexco's movements which Complainants contend are over unauthorized routes, the Commission's attention is directed to Appendix 10. Needless to say, Complainants do not claim to have found all such movements. However, since as has already been shown, infra, at page 20, Rexco never instructed its drivers to follow any specific routes, it can be safely claimed that a substantial percentage of its moves have been conducted illegally.

Complainants further contend that Rexco's operations are in violation of the Commission's rules governing the leasing of equipment, as set forth at Part 1057-Lease and Interchange of Vehicles, 49 C.F.R. §1057.1 et seq.[3/] While it is anticipated that Rexco will attempt

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9/ See Appendix 10, Attachment 1, Rexco Manifest Nos. 2092, 1467, 3147, 6318, 6319, 6209, 6210 and 6211.

1/ See MC-66563 (Sub-Nos. 2141 TA, 2281 TA and 2308 TA, route 20-10 (a).

2/ See MC-66562 (Sub-Nos. 2141 TA, 2281 TA and 2308 TA).

to claim entitlement to the exemption provided equipment utilized in the transportation of railway express traffic by 49 C.F.R. §1057.3(b), Complainants respectfully submit that the exemption does not, and cannot, apply to the Rexco operations.

Before discussing the exemption, it should first be noted that it is well settled the Commission's rules, as set forth at §1057.4(a)(3), have the effect of prohibiting trip leasing, except in certain specific instances.[4/] As the Supreme Court observed in American Trucking Associations, Inc. v. United States, 344 U.S. 298, 308 (1953), in upholding these rules:

> Appellants focus their principal attack on the lease provisions requiring a thirty-day period of carrier control and a measure of compensation other than revenue splitting. All agree that the rules thus abolish trip leasing. (Emphasis added.)

Thus, should the exemption contained in 1057.3(b) not apply to Rexco's operations, there can be no question but that the various trip leases which fail to satisfy the requirements of §1057.4(a)(3) and in particular the back-to-back trip leases, which cannot satisfy those requirements, are illegal.[5/]

4/ For example, §1057.4(a)(3) specifically exempts the equipment of an authorized carrier from the 30-day lease requirement when that equipment is leased for use in the direction of a point which the lessor is authorized to serve.

5/ For lists of back-to-back movements, see Appendices 18, 19, 20 and 21.

The exemption on which it is anticipated Rexco will rely is found at 49 C.F.R. §1057.3(b), and reads, as herein pertinent, as follows:

> §1057.3 Exemptions.
>
> The provisions of §1057.4, except paragraphs (c) and (d), relative to inspection and identification of equipment, shall not apply:
>
> (b) Rail or express vehicles. To equipment utilized wholly or in part in the transportation of railway express traffic, or in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations on railroad billing.

It should be clear that the latter portion of the regulation cannot apply since the Rexco operations are not substituted motor-for-rail transportation. Thus, attention need only be paid to the phrase "transportation of railway express traffic."

In the first place, the phrase "railway express traffic" is not synonymous with "Railway Express Agency." This conclusion follows from a comparison of Section 1057.3(b) with Section 1131.5(b) of 49 C.F.R. where the Commission explicitly states that "[e]ach application for emergency temporary authority for 30 days or less, except those involving the Railway Express Agency or substitution of motor for rail service . . ." As this shows, the Commission has seen fit to differentiate between situations involving the Express Agency and railway express traffic. Thus, the trip lease exemption applies to specified

equipment or traffic, and not simply to REA. Hence, unless Rexco is transporting railway express traffic, the exemption of §1057.3(b) does not apply to it even though it is a division of REA.

Second, it is Complainants' position that Rexco is not participating in the transportation of "railway express traffic" as that term is used in §1057.3(b). This exemption first appeared in Appendix E to the Commission's Report in Lease and Interchange of Vehicles By Motor Carriers, 52 M.C.C. 675, 743-744 (1951), and was meant to satisfy certain objections raised by the railroads and the Railway Express Agency, Incorporated concerning possible adverse effects that the Commission's order and proposed rules might have on the operations of the Agency. Thus, three classes of operations were claimed by Railway Express to require an exemption from the proposed rules:[6/]

> (1) Operations pursuant to arrangements under which the Express Agency furnishes motor vehicles and drivers to railroads holding operating authority from the Interstate Commerce Commission in the transportation of less-carload freight in substituted motor service.
>
> (2) Operations pursuant to arrangements under which express traffic is transported by Star Route Mail Carriers who furnish the motor vehicle and drive the same.

6/ See Docket No. MC-43, Tr., pp. 1730-1731. Also see "Brief In Behalf Of Railway Express Agency, Incorporated" filed May 16, 1949, in Docket No. MC-43. A certified copy of the transcript of the testimony of Paul Gross, Jr., who appeared for the Railway Express Agency, is attached hereto as Appendix 22. A certified copy of the above referenced Brief is attached as Appendix 23.

(3) Operations conducted under arrangements between the parent Delaware company and its wholly-owned subsidiaries, Railway Express Motor Transport, Incorporated, in the State of Indiana, Railway Express Agency, Incorporated, of California, in the State of California, and Railway Express Agency, Incorporated, of Virginia, in the State of Virginia.

In addition, Mr. Gross, the witness for the Railway Express Agency particularly objected (Transcript, pp. 1739-1740) to the proposed Rule 2f (presently §1057.4(f)) requiring the authorized carrier to prepare and preserve for two years a truck or load manifest containing certain information. As he testified:

> Rule 2f which requires the authorized carrier to prepare and preserve for two years a truck or load manifest containing certain information which would be impracticable and unnecessary insofar as the arrangements between the parent company and its subsidiaries are concerned. The express traffic transported on the trucks of a subsidiary consist of a large number of relatively small packages. At the present time a manifest is not required or utilized and it would serve no useful purpose as between the parent and subsidiary companies. A record known as a delivery sheet is affixed to each express shipment and accompanies it to destination; it is not detached from the shipment until arrival at destination. The general character of the express traffic is such that it would be impossible to make any record of the commodities or class of merchandise transported. In some instances the express shipments are not weighted until they arrive at destination, thereby making impossible compliance with that part of the proposed rule which would require the showing in the manifest the weight of the commodity transported. This rule was undoubtedly proposed with regard to the handling of truckload

> shipments and was not intended to apply to, nor could it practically be made applicable to, the handling of a large number of diversified express shipments such as are handled by the Express Agency and its subsidiaries. What has been said concerning the preparation of manifests in connection with the traffic handled by the subsidiaries applies equally to the handling of l.c.l. freight traffic for the railroads.

The above clearly indicates that the Commission in promulgating the exemption was responding to certain identified operations being conducted by REA's predecessors. Had it done otherwise, it would have used the approach reflected in the emergency temporary authority section previously cited and simply exempted REA from the rules. Since the Commission did not take this broad step, but instead limited the thrust of the exemption only to "equipment utilized wholly or in part in the transportation of railway express traffic," it cannot be used to exempt operations that bear no resemblance to any of the operations claimed by REA in the Ex Parte MC-43 proceeding to require exemption.

What has been shown with respect to the Rexco operation unquestionably rebuts any suggestion that it is utilizing equipment, in whole or in part, in the transportation of railway express traffic. The Rexco operations would, therefore, not fall within the type of operation which the Commission sought to exempt. Furthermore, since Mr. Williams in an affidavit presented to the Commission has specifically stated that Rexco will be operated

independently of the parent company and will not provide the services traditionally associated with the transportation of railway express traffic, it is respectfully submitted that Rexco cannot claim the protection of the exemption provided equipment utilized in the transportation of railway express traffic. Therefore, movements such as those outlined in Appendices 18, 19, 20 and 21 are illegal.

In addition, it should be observed that the above violations are only the tip of the iceberg. Complainants, in the course of their discovery, made random copies of numerous manifest packets which originally were to be used to determine the routes Rexco was traversing, the type of traffic they were transporting and that Rexco was, and is, engaging in the back-to-back trip leasing. However, when Complainants' counsel reviewed these packets, an alarming amount of hours of service violations were determined. In addition, it appeared that there had been serious falsifications of drivers' logs, and significant disparities between the points and dates shown on the drivers' logs and the points and dates shown on various fuel receipts.

In order to fully analyze these violations, Complainants requested the expert assistance of Mr. William Johns, Director of the American Trucking Associations, Inc., Safety Department. Mr. Johns' statement and analysis of his findings are attached as Appendix 24.

Complainants submit that Mr. Johns' analysis illustrates the seriousness of these violations. Little

imagination need be exercised to see the great potential for harm that these drivers present to the traveling public.

We would like once again to emphasize that the examples illustrated by Mr. Johns are from only a small sampling of Rexco manifest packets. We believe that Rexco drivers characteristically submit logs that do not truthfully reflect their actual hours of service. In addition, it appears that while Rexco management is totally cognizant of these continued violations, it has taken no firm steps to bring them to a stop. Instead, Rexco has sent memoranda to drivers requesting that drivers correct their logs to remove violations and resubmit them. (See Appendix 25.) We seriously question the propriety of demanding that drivers change their logs once they have previously been submitted as true and accurate.

The U.S. Department of Transportation, Bureau of Motor Carrier Safety, has prescribed hours of service regulations for drivers of commercial vehicles (49 C.F.R. §395). These regulations not only set out the maximum hours that an individual may drive, but also provide for mandatory compliance by drivers and motor carriers alike. Section 395.8(h) demands that the driver shall certify to the correctness of the log by signing his signature on the log in the space provided. Similarly, §395.8(c) provides that only the driver may make entries on the logs. The regulations make it very clear that nothing less than a fully accurate log is acceptable.

Section 395.8(a) provides, inter alia, that the falsification of drivers' logs shall make both the driver and the carrier liable for prosecution. Therefore, if a driver indicated on his logs that he was in a particular place at a particular time, and in actuality was not, he would have violated the truthfulness requirement of the regulations. A failure on the part of the carrier to require drivers to fill out accurate logs also constitutes a willful violation by the carrier, and subjects the carrier to criminal prosecution. U.S. v. Matlack, 149 F. Supp. 814 (1957), U.S. v. Sawyer Transport, Inc., 337 F. Supp. 29 (1971) aff'd., per curiam 463 F. 2d 175 (1972).

We believe that these hours of service violations are but another result of the lack of control Rexco exercises over its operations. Indeed, a threat to terminate the driver is rather hollow, because all of its drivers are only employed on a one-trip basis.

We recognize that the Commission is without jurisidiction to prosecute these hours of service violations. However, it is respectfully submitted that the Commission may properly consider these violations and the other violations to be a positive indication of REA's unfitness to hold and operate motor carrier authority. "If a carrier is not in substantial compliance with applicable safety regulations, it is axiomatic that such a carrier is a threat to the public, and proper exercise of this Commission's regulatory powers requires that we take steps necessary to

protect the public." Midwest Coast Transport, Inc., Ext. -- Duluth, Minn., 105 M.C.C. at 732 (1967), findings modified on further consideration, 106 M.C.C. 380 (1968).

Complainants would like to emphasize that all of these movements were discovered upon a review of a very small sampling of Rexco manifest packets. Because so many serious violations appeared in such a small sampling, it is strongly suggested that these violations are not mere aberrations, but rather that this entire situation is necessarily the natural result of the Rexco method of operation. In other words, these violations are made possible, and even encouraged by management's complete lack of control over its agents and drivers. Where agents are not informed of the extent of their principal's operating authorities, but rather are told to solicit all traffic and move it any way they can, such violations occur.

D. THE REXCO OPERATIONS ARE A DESTRUCTIVE, ILLEGAL COMPETITIVE PRACTICE.

As has been argued by Complainants throughout this proceeding, the Rexco operations, which are a marked departure from those conducted by REA, have unlawfully diverted substantial amounts of traffic from Complainants.[7/] Furthermore, while the Commission in the past has recognized a need for the unique services rendered by REA under its express certificates, it has never been asked by REA to find that a need exists for it to perform operations of the type that are being conducted by Rexco. Thus, by initiating such operations without obtaining prior approval from the Commission, REA has usurped the Commission's jurisdiction to decide the issue of public convenience and necessity and has inflicted substantial, detrimental injury on carriers such as the various Complainants that went to the trouble and expense of obtaining proper certificates.

Furthermore, it should be observed that Rexco was not able to divert this traffic because it offered a superior service or because its service was expedited. Instead, Rexco was able to divert traffic solely because its rates are in some instances fifty-three (53) percent of the rates of its competitors.[8/] While it is recognized that a lower competitive rate may be justified in some circumstances, and the existing

7/ See Appendices 13,15,16,17,26,27,28,30,31,32,33,34,35, 36,37,38,39,40,41,42,43,44,45 and 46.

8/ See Appendix 15 at page 8.

rate structure should not be regarded as sacrosanct, the desire for lower rates must be counterbalanced against the need for economic viability on the trucking industry's behalf. It is here that the Rexco operation has taken its greatest toll.

While the Trustee has identified the Rexco operations as being "the only operations of the Bankrupt which are economically feasible for the Trustee in Bankruptcy,"[9/] this statement must be considered in light of the overall picture. In the first place, the Rexco operations do not entail any terminal expenses or other expenses connected with the ownership of equipment. Thus, its overhead expenses are purely administrative and are likely covered by the percentage of the revenues earned by Rexco. What the Trustee fails to indicate is that the burden of providing the service falls entirely on the owner operators who supply the equipment on a trip-lease basis and, thereby, foot the bill for Rexco. In this respect, the observations of the Supreme Court in American Trucking Associations, Inc. v. United States, supra, 344 U.S. at 306, should be heeded, especially its conclusion that:

> "Use of exempt equipment by authorized carriers also tends to obstruct normal rate regulation. Schedules are traditionally grounded in costs. But the cost picture of a carrier who depends largely on leased equipment is far different from that of a carrier

9/ See "Trustee's Answers to Extent Possible As of August 16, 1976, To Complainants' Interrogatories Nos. I Through V," dated August 16, 1976.

> owning his own trucks. Not only is the former able to undertake operations with relatively slight investment. As well, his current overhead involved in operating leased equipment is solely administrative, the owner of the exempt equipment bearing the expense of gas, oil, tires, wages and depreciation out of his share of the fee. And to refer to the exempt owner's own expenses as determinative of what is a 'reasonable' rate would be manifestly impossible as long as the relationships between lessor and lessee are too tenuous, short-termed and informal and the compensation of each based on a division of revenue."

Second, while these operations are economically feasible for the Trustee, it must be remembered that the industry is being required to meet the Rexco rates or forego the traffic. In other words, Rexco is using the owner operators who are willing to work for an extremely depressed wage to gain an unfair and destructive competitive advantage over the rest of the industry. While on the short run this may not prove to have a detrimental effect, as carriers are forced to lower their rates in order to compete with the Rexco rates, a serious problem will develop as the owner operators working for such carriers will find their earnings being dissipated as they are forced to accept less revenues. Since their costs are unlikely to drop, it can be readily anticipated that the truck strike of 1973 and 1974 will be repeated as the owner operators will be forced by sheer economic necessity to take their rigs off the nation's highways. In short, while the Rexco operations may be beneficial to the Trustee, they are not in the ultimate best interests of the national transportation system and should, therefore, be halted immediately.

IV.

THE REA HUB TEMPORARY AUTHORITY SHOULD BE CANCELLED AND THE CORRESPONDING PERMANENT AUTHORITY APPLICATION SHOULD BE DISMISSED

As part of this proceeding, Complainants respectfully request that the Commission cancel the temporary authority held by REA by virtue of the Commission's order served June 5, 1968, in Docket No. MC-66562 (Sub-No. 2308 TA), and also dismiss the corresponding permanent authority application docketed as MC-66562 (Sub-No. 2314).[1/] As noted previously, the express services formerly provided by REA were performed in large part under temporary authorities, particularly the "hub" authority in Sub-No. 2308 TA. As REA is now nothing more than a mere shell of a company following its bankruptcy and is thus totally incapable of reviving this service, the Commission should recognize this fact and cancel REA's Sub-No. 2308 temporary authority.

Furthermore, the circumstances which gave rise to the issuance of these authorities fully eight years ago are now completely changed. Initially, REA itself recognized that this authority was operationally

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1/ This request is part of the instant complaint proceeding by virtue of the petition filed December 1, 1975, by the American Trucking Associations, Inc., entitled "Petition Seeking Dismissal of the MC-66562 (Sub-No. 2314) Permanent Authority Application and for Cancellation of the MC-66562 (Sub-No. 2308 TA) Temporary Authority," which was consolidated with the instant proceeding by the Commission's order served April 8, 1976.

unworkable and specifically sought to obtain an alternate means of providing service. Thus REA never saw fit to present evidence in support of a permanent grant of this authority but rather repudiated it in subsequent proceedings. As stated by REA in its Statement In Support Of Application Of REA Express, Inc. For Irregular Route Authority in Sub-No. 2337, at p. 2, "[c]onfronted with the need to proceed with the hub case, REA's new management began an analysis of the system and concluded that it did not fit REA's public service and operational requirements.

Moreover, under the Rexco operation, this authority has been shown to have a high potential for abuse, with serious detrimental results upon the nation's system of regulated transportation. The only purpose in allowing it to remain in existence is as an article of commerce, to be sold to potential purchasers for whatever uses they may have in mind. Such purpose in no way constitutes a basis for allowing this temporary authority to remain in existence.

At the outset it must be recognized that there is really nothing left of REA following its November 7, 1975, adjudication as a bankrupt and subsequent liquidation of its equipment and facilities. Not only have its express operations been discontinued, but also its means of providing service, including its carrier equipment, terminals, office supplies, terminal equipment

and furniture have been liquidated through a series of auctions. In addition, those shippers once served by REA have turned to other carriers. Thus, the authorities issued by the Commission authorizing the transportation of general commodities moving in express service apparently constitute the bulk of what remains of REA's former assets. Moreover, since all activities pursuant to these authorities ceased as of November 7, 1975, there is no remaining express service to be preserved or continued.

While the Trustee now claims that he has sought "to preserve the nation's only nationwide express operating authorities and service to the public by continued, interim operation of the Rexco Division, the only operations of the Bankrupt which are economically feasible for the Trustee in Bankruptcy,"[2/] such a claim is patently specious. As has been shown, supra, pp. the Rexco operation is not an "express service conducted over regular routes," but rather is the antithesis of such an operation. Hence, the Rexco operation may not correctly be viewed as a legitimate "continued, interim operation" under REA's authorities. Instead, it is a deliberate attempt to institute, without Commission approval, a new service in a totally new marketing area that was never previously served by REA. While such a

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2/ See "Trustee's Answers, to Extent Possible as of August 16, 1976, to Complainant's Interrogatories Nos. I through V," filed August 16, 1976, at p. 6.

step may have contributed to REA's coffers, it cannot be viewed as a legitimate continuation of REA's "express" service.

REA, as a result of the events set forth above, is in no position to renew its past express operations. Nor is it possible for REA successfully to prosecute its pending permanent authority applications. The Commission has recently restated with considerable force that bankrupt, inactive carriers cannot be deemed fit to receive authorities. In Associated Transport, Inc., Extension, T.V.A. Power Plant, 125 M.C.C. 69, 74 (1976), Division 1 specifically held that a bankrupt, inactive carrier could not be held fit to receive authority. The Division stated:

> Moreover, and more significantly, Associated has been adjudged bankrupt and is presently in the process of being liquidated. It can no longer even provide the questionable quality of service it has heretofore performed. No reasonable person could seriously contend that a bankrupt carrier which is being liquidated could be considered either fit, willing, or able properly to perform the proposed operations. By no means could a bankrupt corporation be considered financially fit; and a corporation which is in the process of liquidation, and which has ceased to perform motor carrier operations, cannot be deemed able or willing properly to perform any transportation services.
>
> Nonissuance of a certificate based on a lack of carrier fitness is not a punitive measure. Fournier's Express, Inc., Ext.-Hartford, Conn., 108 M.C.C.584, 585 (1969). Rather, it is an evaluation

> by the Commission of a carrier's willingness and ability to comport in the future with the applicable rules and regulations of this Commission. Spector Freight System, Inc., supra, p. 892-893; Ewen Brothers, Inc., Com. Car. Applic., 117 M.C.C. 101, 104 (1972); Leavitts Freight Service, Ext.-Saginaw, Oreg., 119 M.C.C. 467, 470 (1970). Certainly, it is not in the public interest to award grants of authority to carriers which have, for all practical purposes, ceased to exist. Associated, a bankrupt, liquidating corporation, is neither fit, willing, nor able properly to perform the proposed operations.

REA's pending temporary and permanent authority applications stand on the same footing. REA can hardly be found to be fit to receive these authorities when it is bankrupt and when it has stated that these authorities actually impede the rendering of an effective service to the public.

It should be remembered that REA never took any positive steps in the last 10 years to prosecute its numerous permanent authority applications, but instead deliberately chose to perpetuate the temporary nature of a large percentage of its operations, including the hub authority.[3/]

3/ As recognized by the Commission in REA Express, Inc., Application for ETA, supra, 117 M.C.C. 89-90: "REA's present management has had ample time to prepare and file an application for permanent irregular-route authority, which would afford a proper means of determining the extremely serious questions posed. They have chosen not to do so. Rather, they have presented to us a series of continuing 'emergencies,' asking that we ignore anything

(footnote continued on following page)

Moreover, by taking this tack, REA for years successfully avoided putting any witnesses on the stand to testify under oath and withstand cross-examination concerning their alleged need for REA's authority. Thus, in the hub permanent authority proceeding, there is no existing evidence of record upon which the Commission could decide the public convenience and necessity issue.[4/] The record developed by REA consists only of the application, REA's self-serving "Statement of Facts" outlining REA's precarious financial position, a physical description of the hub system, and the unverified letters of support from would-be shippers which are, under present circumstances, hopelessly outdated and entitled to no probative value concerning the alleged need for REA's service. As a practical matter, it is clear that the predicament facing REA with respect to

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3/ (cont'd)
but cursory consideration of the issues, and attempting to ascribe managerial failures to this Commission's refusal to accede to whatever REA might desire." If REA had "ample time" in 1971, surely the passage of four more years cannot be considered as anything other than "more than ample time."

4/ This serves to illustrate one other interesting twist to the REA saga. Whereas the Commission in other instances involving ordinary motor carriers has imposed a substantial burden of proof on "nationwide" applications, it has never had other than a cursory opportunity to consider in its broadest implications the question of a need for REA's nationwide motor carrier express service. While REA has filed thousands of applications for authority, only the hub authority and the two later irregular-route applications actually involved nationwide motor carrier authority. In other words, REA's status as a "nationwide" carrier has nothing to do with past findings of public convenience and necessity by the Commission.

the transferability of its temporary authorities was created by REA itself. Had it taken steps to prosecute its outstanding permanent applications, it would perhaps be in a position to object to the revocation of its temporary authority. Having failed to do so, it must suffer the consequences.

Complainants further contend that the present circumstances are so changed from those surrounding the hub authority that the Commission's rationale for granting the authority has been rendered moot. As a review of the hub application and the Commission's order approving it will demonstrate, the underlying consideration was the avoidance of the emergency situation confronting REA as a result of the substantial diversion of traffic associated with the disintegrating rail line-haul service REA was experiencing. Thus, it was determined that by permitting REA to restructure its authorities and by retaining rail line-haul only in those instances where it was economically and operationally feasible, that REA would be able to continue its operation.

At the same time, it was understood that the restructuring of its authorities into the hub configuration would not result in the broadening of REA's existing operations. Thus, it was stated at pages 6-7 of the Statement of Facts accompanying the hub application:

> REA emphasizes that the granting of the authority herein sought will not result in the entry of REA express

> service into areas it has not previously served, REA will be enabled to provide to the public an improved express service for small shipments.

In addition, it was stated, id., at page 8, that "[i]n no instance will these new operating arrangements extend REA's service to new marketing areas not already served by REA under its present operating system."

Furthermore, REA continuously stressed the fact that it considered itself to be essential to the small shipments market. As explained, id., at pages 1-2:

> Indeed, except for the Post Office Department, REA may properly be described as the only nationwide small shipment specialist. Unlike almost any other carrier, REA considers that its primary task and function is to maintain and operate its transportation plant for the maximum accommodation of small shipments, no matter what their characteristics. No other nationwide transportation company is devoted to this single purpose.

It was further explained, at page 2, that:

> As indication of REA's unique niche in the transportation industry, its average weight per piece handled is 36 pounds, its average shipment weighs 72 pounds. Less than truckload shipments (up to 10,000 pounds) carried by Class I motor carriers of general commodities average 591.1 pounds. Sixty-one freight forwarders with annual revenues of $100,000.00 or more handle shipments averaging 510 pounds. These figures clearly indicate not only the importance of REA's role as a small shipment carrier, but the importance of small shipments to REA.

> The present and continuing crisis in the small shipment area dictates that REA must not only continue its operations but must eliminate service delays and inefficiencies that adversely affects its ability to meet the needs of the shipping public in this area.

As these statements reveal, REA did not represent to the Commission, the supporting shippers or the opposing motor carriers that it intended in any manner to institute a new type of service or to broaden its basic operations. Instead, the only inference that can be drawn is that REA intended to improve its express operations which it considered to be synonymous with the transportation of small shipments.

Thereafter, by order served June 5, 1968, the Commission granted REA temporary authority to operate under the hub configuration. As herein pertinent, this grant was predicated on several factors including "the well-known crisis in the movement of small shipments" and the existence of an emergency situation "with respect to the continuation of the express operations of REA." Thus "to enable the provision for express service for which there is an immediate and urgent need to points in areas having no carrier service capable of meeting such need, such emergency requires the authorization of express service . . ." In addition, the order specifically noted "[t]hat, as indicated in the application, the authority

sought will not result in the entry by REA into areas not previously served."

The Commission's order was subsequently affirmed by the three-judge District Court in Saginaw Transfer Company v. United States, 312 F. Supp. 662 (E.D. Mich. 1970). In its opinion the Court emphasized the Commission's focus on the immediate and urgent need for the provision of express service, the emergency situation confronting REA's express operations and the assertion that the authority sought will not result in the entry by REA into areas not previously serviced. See id., at 665-666. In short, all concerned clearly perceived the Commission's grant of this authority to be predicated on the immediate and urgent need for REA's express service.

As has been noted previously, REA soon found the hub authorities totally unsuited for the providing of the service described in seeking the hub authority. In its 1971 application for irregular-route authority in No. MC-66562 (Sub-No. 2337 TA), REA stated that the hub system had proved to be inefficient for REA and inadequate in providing service to the public. (See Statement in Support of Application, p. 2.) Specifically, REA adopted a management analysis by A. T. Kearney & Company, Inc., which found the hub authorities a totally unworkable vehicle for providing small shipment service to the public. The Kearney Report criticizes the hub authority for a number of reasons. Initially, it

characterizes the hub authority as rail oriented and improperly thought-out to meet the needs of a motor carrier transport system:

> REA's management in 1968 did not seek authority adequate to the requirements of a new system. This occurred because of these basic factors:
>
> 1. The severity of the problem placed REA's management under extreme time pressure. The resulting application under these circumstances was far from the comprehensive network needed.
>
> 2. The design of the motor vehicle operating system was created by REA personnel who had a distinct rail orientation.
>
> 3. REA personnel had little general background in line-haul services, as the railroads for the most part planned and performed these services and sold them to REA.
>
> The resulting authority for interstate traffic (permanent plus temporary) has limited REA to serving almost all the points as if the railroad passenger trains still formed the backbone of its line-haul system. However, this same authority has limited REA because many of these locations are presently insignificant shipping points. Between the 1930's and present, the nation's demographic characteristics have changed. Also, many of REA's terminals are now improperly located to provide economical express service to present market areas. (Kearney Report, p. 4)

Similarly, the Kearney Report criticized the fixed nature of the hub and satellite design of the hub temporary authorities. The Report stated that the hub feature unnecessarily forced all shipments to move through terminal gateways:

> 1. There is significant inflexibility in REA's operating pattern because shipments must move through terminal gateways, even though the volume of express shipments would economically justify direct routes which eliminate the congestion, the delay and expense, (through backhauls), which result from the compulsory use of gateways. (Kearney Report, p. 5)

Furthermore, the Kearney Report noted that the hub did not have a sufficiently broad territorial base:

> 2. Efficiency is limited by regular routes and regular call schedules which do not respond to changes in traffic flow, and distribution is plagued by circuity and inflexibility. Pickup and delivery routes outside metropolitan areas cannot be quickly adjusted to changed demands. (Kearney Report, p. 5)

Finally, the Kearney Report characterizes the hub authority as being inflexible and requiring the filing of multiple applications with the Commission in order to meet changes:

> 4. With its present authority, REA cannot adjust to demographic characteristics and changes. REA's express service encompasses the entire United States. There are wide demographic variations throughout the United States. Yet, REA's authority is too flexible to enable the Company to respond to demand for adequate expedited service to all potential users in various sections. The shifts in demand resulting from demographic changes would force REA to petition the ICC for numerous route modifications annually. The delays involved would deny to shippers the express service they need pending the modification of authority. Also, the government and the parties would be subjected to the expense of needless proceedings. (Kearney Report, p. 6)

Indeed, REA found the "hub" authority to be so unsuited to its needs that it specifically advised the Commission that it did not desire to prosecute the related permanent authority application in Sub-No. 2314. In its Petition for Reconsideration dated June 11, 1971, in the Sub-No. 2337 TA proceeding, REA advised the Commission, at page 13, as follows:

> [F]or REA to pursue to conclusion permanent application in the Hub case would do the Commission, the public and REA a considerable disservice. For experience demonstrates that the Hub authority precludes REA from providing to the public a modern, efficient and economical express service. The present and future of shippers and REA depends on replacing the Hub and other bits and pieces of motor operating authority it holds with the authority sought herein. Rather than imposing a burden on the Commission, REA's present application will avoid the necessity of a hearing on the Hub authority--which events have shown cannot do the job--as well as the numerous pending atomized bits and pieces of regular route authority. For REA will dismiss the Hub proceeding and all other pending applications for motor operating authority upon final approval of the grant of the authority sought.

In light of the above, it is respectfully submitted that little credence can be paid to the Trustee's assertion that the public interest would be served by preserving the hub temporary authority and permitting the substitution of any party in the related permanent application proceeding. In short, the Commission should at this time cancel the hub temporary authority.

There is no merit to any argument that the hub authorities should be continued in order to facilitate a transfer of REA's authorities to other parties. There are no equities surrounding the REA applications that warrant the substitution of another party as applicant. Since a party substituting for REA would be in the position of starting from step one, not only because of the total lack of evidence of record, but also because it would not be taking over an ongoing concern, it is virtually impossible to understand why the Commission would not require a party to file a new application costing only $350, rather than pay several million for the right to join forces with REA in the prosecution of a stale application for authority which REA has testified is unworkable, inefficient and uneconomical. Allowing the hub authority to remain in effect for the purpose of transfer or substitution would treat this authority as a mere article of commerce, unrelated to any workable plan of operations or existing viable service. It is respectfully submitted that the public interest would be better served by putting this money into terminals and equipment rather than paying off REA's debts.

The sole reason for substitution of any party in the permanent authority application would be to take advantage of the outstanding temporary authorities of REA while avoiding the Commission's prohibition against the transfer of temporary authority. It is

Complainants' position that the circumstances involved herein should preclude the Commission's sanctioning this legalistic sham.

In the first place, this proceeding does not involve a situation where an applicant has presented its evidence in the permanent case demonstrating the need for its proposed operation and, pending the Commission's decision, is sold or is otherwise rendered incapable of performing the service for which a need had been demonstrated. Complainants suggest that the absence of any evidence on which the Commission could rest a finding of need for REA's service on a permanent basis serves as a valid and reasonable touchstone to distinguish the instant proceeding from others in the past where the Commission has permitted substitution.

Second, this proceeding does not involve a situation where the Commission has recently found an immediate and urgent need for a particular service. Here, of course, over eight years have passed since the Commission's finding. While the Commission at that time may have properly found an immediate and urgent need to exist warranting the grant of nationwide, motor carrier express authority, that finding lacks validity today. The events of the previous nine months speak for themselves. Furthermore, if the past eight years are considered, it is seen that, despite the best efforts of the Commission, REA was never really able to come to

grips with the overall problems confronting it. Thus, its ultimate demise was never avoided but was merely postponed by the various stop gap measures employed. In short, it must be realized that REA's failure to respond was not attributable to any one event. Rather it stemmed from the gradual erosion of the market that REA at one time dominated and even monopolized. In other words, the hub authority could not, and did not, restore REA to its former position for the simple reason that the shippers were no longer dependent on REA. Instead, as the shipping public gradually found other carriers to be more responsive to their needs, the shift from REA quickened. This shift hit its crescendo following Congress's approval of the increase in size of Parcel Post. As the figures will demonstrate, REA lost 10 million shipments a year following the successive increases in the size of Parcel Post. Therefore, in the final analysis, it must be concluded that the need for REA's service proved to be far less than the Commission imagined.

In short, complainants urge the Commission recognize the overall capabilities of today's transporation system. There is simply no reason to superimpose a service such as REA's on the existing system which has proved its ability in the last few years, and particularly in the last nine months, to satisfy the needs of the shipping public.

In short, it is respectfully submitted that the Commission may find that there is no need to permit the reinstitution of a nationwide express service, and should, therefore, follow the example of the Civil Aeronautics Board which recently concluded that air express was no longer in the public interest. As summarized by the Court of Appeals in its decision affirming the Board's decision, REA Express, Inc. v. Civil Aeronautics Board, 524 F.2d 54, 59 (2nd Cir., 1975) cert. denied, 75-1233, 44 L.W. 3685 (June 1, 1976):

> The Board further concluded that air express service was no longer in the public interest. Based on its analysis of the record it found that as the nation's general air freight industry had grown many of air express' historical advantages had "withered away." REA's air express business, in contrast to that of the airlines and forwarders, had not increased substantially. Its service was no longer unique since it was not faster than that of the forwarders, which had developed operational techniques comparable and in some instances superior to express service, as reflected by elapsed time surveys. The Board found that with the increase in air cargo space air express' priority rarely had any impact. Although a small percentage of shippers found air express' highly expedited service useful, the Board decided that this need could better be handled by requiring the air carriers to develop a new highly expedited priority service under special tariffs that would be available to all shippers demanding priority service rather than to permit it to be handled solely by REA as a coordinating ground agent.

In any case, it is suggested that any future consideration of the question of a present and future public need for a nationwide motor carrier express service should be undertaken in a proceeding that is free and clear of all vestiges of REA. There is simply no reason to equate the "bailing out" of REA with the public interest as urged by the Trustee. Finally, as a matter of common sense, it is respectfully submitted there is no reason to saddle a company attempting to reinstitute express service with either a system of operations that has been shown to be inadequate or a massive multimillion dollar debt.

CONCLUSION

For all the above stated reasons, Complainants respectfully pray that the Commission immediately enter a cease and desist order against the illegal operations of the Rexco Division of REA Express, Inc. The Complainants further pray that the Commission cancel the outstanding temporary authority issued REA Express, Inc. in Docket MC-66562 (Sub-No. 2308 TA) and dismiss the permanent authority application in Docket MC-66562 (Sub-No. 2345, Part No. 181).

Respectfully submitted,

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Washington, D. C. 20036

Date Due: August 23, 1976

Date Filed: August 23, 1976

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APPENDIX 2

Attached hereto as Complainants' Appendix 2 is a copy of the Affidavit of Mr. Donald W. Williams Which was originally presented to The Commission as Exhibit 1 to the Reply to Protests in Suspension Board Case No. 63240, Rexco Tariff 85, I.C.C. 161, Dated July 1, 1975

Exhibit No. 1

AFFIDAVIT OF DONALD W. WILLIAMS

My name is Donald W. Williams and I reside at 7400 Roosevelt Boulevard, Philadelphia, Pa. I am Manager of REXCO, a division of REA Express.

I have been engaged in the field of motor carrier transportation since 1946. My career started with Associated Transport, Inc. at Roanoke, Virginia where I performed duties starting with freight handler through all operating functions including city driver, over-the-road driver, and all administrative functions. In 1947 I was transferred to Knoxville, Tennessee as Terminal Manager of Associated Transport, Inc., and remained in that capacity for approximately two and one-half years. In late 1949 I was transferred back to Roanoke, Virginia as Regional Director - Tennessee Valley Region of Associated Transport, Inc.

In 1951 I resigned from Associated Transport, Inc. to accept a position as Director of Operations of Masser Motor Freight, Hagerstown, Maryland. In that position I was responsible for all company operations both terminal and line haul and handled all labor relations. The line haul operation was predominatly staffed with independent contractors, otherwise known as owner-operators.

In 1953 I resigned from Masser Motor Freight to accept a position with Great Southern Trucking Company, Jacksonville, Florida as Director of Operations. In 1956 I left the employ of Great Southern Trucking Company to return to Associated Transport Inc., as Director of Customer Services, domiciled at New York City.

In 1959 I resigned to accept a position with Merchants Motor Freight at St. Paul, Minnesota as Vice President - Operations, with responsibilities including terminal and line haul functions, claim

prevention, labor relations, systems and procedures, and related matters. In 1961 Merchants Motor Freight was sold and I accepted a position with Murphy Motor Freight Lines, Inc. in St. Paul, Minnesota as Terminal Manager and Superintendent of Claims and Claim Prevention. Murphy Motor Freight Lines, Inc. at that time covered the State of Minnesota, western North and South Dakota, and northern Iowa.

In 1966 I resigned from Murphy Motor Freight Lines, Inc. to accept a position as Vice President - Operations with Consolidated Forwarding Company, Inc. at St. Louis, Missouri. In this position I was responsible for all operations covering motor transportation in the States of Wisconsin, Illinois, Indiana, Iowa, Ohio, Missouri, Oklahoma and Texas.

In 1968 I resigned the aforementioned position to accept employment as Vice President - General Manager of Sullivan Lines, Inc., of Newark, New Jersey, a carrier that uses owner-operators exclusively. At the time of my joining Sullivan Lines this carrier was producing less than one million dollars per annum in gross revenue. Its operation was confined to the transportation of general commodities (except those of unusual value, Class A and B explosives, livestock, commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment) "which are at the time moving on bills of lading of freight forwarders". The scope of Sullivan's operating authority at that time was between Boston, Mass., New York, N.Y., Philadelphia, Pa., Baltimore, Md., and Washington, D.C., and between those points, on the one hand, and on the other,

Buffalo, N.Y., Pittsburgh, Pa., Toledo, Cincinnati, Columbus and Dayton, Ohio, and Detroit, Mich., serving some specifically designated intermediate points.

Recognizing that it would be almost impossible to develop Sullivan Lines into a truly healthy carrier within the limits of this operating authority, we sought to expand the operation through developing concurrences with authorized connecting general commodity motor carriers, with the result that we were soon operating into Chicago, Milwaukee, and St. Louis in joint line haulage with various carriers.

By 1971 Sullivan Lines Inc. enjoyed revenue of almost five million dollars while reporting an operating ratio of 91.6 for that year. It was during July of 1971 that we applied for and obtained temporary authority to extend our operation westward to Los Angeles and Oakland, California during the railroad strike experienced at that time. It was this experience that was the forerunner to our applying for permanent authority to cover many west coast points, (Docket No. MC-47109 Sub No. 7). This authority was granted by the Commission on May 2, 1974 and is being operated today by the present management of Sullivan Lines, Inc.

Just as was the case in the Sullivan operation, the development of the REXCO division of REA contemplates the use of owner-operators.

My experience in developing this type of operation speaks for itself in the records of the Commission in the matter of Docket No. MC-47109 (Sub No 7) wherein it was found that the company which I had developed from a non-profit level to one of a good

profit level was fit and able both operationally and financially to be allowed the right to extend its operation transcontinentally, despite the many, many protests lodged by various carriers and carrier groups.

My years with Masser, and especially as Chief Operating Officer for Sullivan Lines give me a sound background and actual practice in running a carrier that uses owner-operators. The management techniques I developed and used at Sullivan will be used in running REXCO. Based on my experience, I know that I can run a profitable operation at the rates published in REA Tariff No. 85, ICC No. 153. Those rates will be more than compensatory.

The entire key to profitability in any operation lies first in preserving every possible economy in the carrier's operation. As a division of REA Express, Inc., REXCO will operate independently of the parent company. There is neither requirement nor necessity for REXCO to maintain terminals. REXCO will not provide platform services, assembly or pickup services, etc., nor will REXCO at any time utilize the facilities or personnel of REA Express Inc. in field operations.

The rates in question cover the line haul movement of the load, and do not involve loading or unloading. Item 90 of REXCO's tariff provides an accessorial charge when shipper requests carrier to load or consignee requests carrier to unload. Therefore, evaluation of the proposed rates as to profitability must ignore the loading and unloading portion of P&D costs inasmuch as those costs are paid for by shipper and/or consignee

(when service is requested of carrier). The other portions of the pickup and/or delivery factor are part of the owner-operator's normal service and are paid for as part of his mileage rate.

Further in the matter of protecting economy in operations, REXCO will utilize field agents on a commission basis. Consequently sales expense will only be incurred on business actually handled. I also expect that a substantial number of accounts will utilize REXCO through my own efforts. There will be no commission to pay on these movements.

Based on my experience at Sullivan, I estimate that the costs of REXCO, at today's cost levels, will be:

Owner Operator	40 cents/mile	(1)
Commission Agents Fee	7% of revenue	(2)
Trailer Ownership	$2.71 per day	(3)
Trailer Maintenance	1 cent/mile	(4)
PL&PD, Cargo, Insurance	2 cents/mile	(5)
Highway Taxes	1 cent/mile	(6)
Communications Expense	$5.00 per load	(7)

(1) I have interviewed numerous owner-operators, many of whom have worked for me in the past. They are willing--even eager--to haul loads for REXCO at 40 cents per mile. See attached statement and list of owner-operators who signed the statement indicating their desire to work for REXCO.

(2) In many cases, there will be "house" accounts on which no commission is paid, thus resulting in a substantial overstatement of cost.

(3) I understand REA leases trailers at rates from $80 to $134 per month. The actual daily rate would be slightly higher than 2.71

(4) This is primarily tires. By insisting on proper inflation, I've found that real economies can be realized. The Commission agents and drivers are responsible for the inspection of tractor-trailer units, including tire pressure.

(5) This includes all insurance costs, PL&PD, cargo, workmen's compensation, etc.

(6) This includes fuel taxes and license fees. The State laws vary so much that a great deal depends on the particular states through which the load travels.

(7) This will cover phone calls for scheduling and back hauls, WATS line at headquarters. An 800 number inbound.

The rates proposed will more than cover the expenses incurred. They should be allowed to become effective.

Donald W. Williams

Donald W. Williams

DISTRICT OF COLUMBIA
WASHINGTON

Subscribed and sworn to before me this 30th day of June, 1975.

Hilda Kalish

Hilda Kalish
Notary Public, DC

My Commission expires July 14, 1979.

STATEMENT OF WILLIAM MILLER

My name is William Miller, and I reside at 6036 Cardinal, Portage, Indiana. My business address at present is 202 112th Street, Hammond, Indiana 46326. From September, 1975 through February, 1976, I was an agent of the Rexco Division of REA Express, Inc. During the period in which I served as Rexco's agent, I conducted business from a small frame building at 6363 Melton Road, Portage, Indiana. I was personally involved in the movement of substantial amounts of freight for Rexco during this period as the entire agency was operated by myself and two assistants. Moreover, through conversations with other Rexco agents and Rexco's general manager, Donald Williams, I am completely familiar with the nature of the Rexco operation.

Rexco operated basically through independent agents and independent owner-operators of vehicles, none of whom to my knowledge were Rexco employees. Under the Rexco system, Rexco agents solicited freight in their particular areas from shippers with whom they had contact. These same agents also were responsible for obtaining equipment and drivers to transport this traffic. The agent would effect a lease of the owner-operator's equipment to Rexco, and provide the driver with placards and a number of forms to be filled out. Following completion of the movement, the driver would mail the

forms to Rexco in Philadelphia for billing and collection. ~~When the monies had been collected~~ Rexco would ~~then~~ remit 75% of the revenues to the driver and 7% of the revenues to the agent. Thus, the entire responsibility for the solicitation of traffic and handling of freight was effectively turned over to Rexco agents and whatever owner-operators these agents chose to make arrangements with. The only function provided by Rexco itself was the rating, billing and collection of freight charges, and the subsequent distribution of percentages of these charges to the drivers and agents.

When I began my service as a Rexco agent, I had been employed for a number of years in various positions with motor carriers in northern Indiana or the Chicago area. In this capacity, I had developed many contacts with large shippers in northern Indiana, particularly in the steel mills. A substantial part of my time as a Rexco agent was spent soliciting freight from these shippers. The basic tool available for freight solicitation was the rate level contained in the Rexco Commodity Tariff 85. The rate levels in this tariff were substantially lower than those found in tariffs of many other carriers serving northern Indiana. Initially, I also attempted to promise these shippers expedient service. However, because Rexco had no regularly assigned equipment, it was impossible to regularly fulfill shipper requests for prompt pick-up of their goods. However, I continued to solicit traffic based on Rexco's low rates and was generally

successful in obtaining such traffic.

The freight in the Rexco operation with which I was familiar was exclusively truckload in nature. I was instructed by Mr. Williams to handle only truckload traffic and solicited only commodities which normally move in truckloads. While I remember an occasional load involving a pa tial delivery in transit, in no instance did I arrange for multiple pick-ups of shipments of less than a truckload nature. I was given instructions by Mr. Williams to avoid less than truckload shipments entirely. There were never any Rexco facilities in my area for the assembly and consolidation of LTL freight into truckloads. Moreover, the Rexco 85 Tariff was for all practical purposes a truckload-only tariff, even though rates were expressed in less than truckload weights as well. Regardless of the shipment weight tendered by a customer, the same total dollar charge would always apply under this tariff. In effect, the shipper was paying a flat fee for the movement in question and thus was in a favored position if he happened to be shipping in a truckload lot.

The customers I solicited for the movement of freight via Rexco were generally the large industries located in northern Indiana. A large part of the traffic which I was able to obtain for Rexco consisted of shipments of iron and steel articles which moved on flatbed equipment. Approximately 50 % of the loads I obtained moved on flatbed units. I also solicited other truckload commodities,

such as chemicals. Because I had no regular drivers or pool of equipment, I was in no position to offer any special services to shippers. Thus, I never solicited or moved any traffic involving perishables, commodities of high value, goods requiring refrigeration, or other out of the ordinary items. There was a turnover of Rexco agents in my area during my term as an agent and I occasionally would have responsibility for freight originating in Chicago or in western Michigan. However, during the entire course of my agency, I would estimate that I had no more than eight to ten major customers which Rexco was serving on outbound freight.

As indicated above, virtually all of the service provided by Rexco during the time I was an agent was provided with equipment obtained on a trip lease basis. Rexco owned no equipment and was not leasing equipment on a long-term basis to any substantial degree. My only source of equipment was available owner-operators terminating in northern Indiana who were willing to trip lease their equipment to Rexco for a move to some other point. To obtain drivers, I established a direct telephone line to my office from a truck stop at 159th Street and the Calumet Expressway in Chicago. I then hoped that drivers stopping at this facility would call me to obtain routes outbound from the Chicago area.

In many instances it was difficult to arrange enough trip leases to handle the requests of our customers. As Rexco's rates were much lower than those of other carriers, drivers consequently

would earn a much lower amount through a split of revenues based on Rexco's rates. Accordingly, when traffic was plentiful, many drivers would refuse to trip lease their equipment to Rexco. Also, Rexco developed a reputation among the owner-operators for slow payment or non-payment of driver percentages. Thus, they were reluctant to handle Rexco freight for this reason as well. Occasionally, Don Williams would call from Philadelphia and advise that certain units had been trip leased to Rexco agents heading westward and seek to have them trip leased back through my agency with eastern freight. However, this was a highly infrequent occurrence and well over 90% of my shipments moved in trip leased equipment which I was able to obtain independently in northern Indiana.

This reliance on trip leased drivers made it virtually impossible to effect any regularity of service for particular shippers. When I obtained loads for Rexco out of the northern Indiana Steel facilities, the mills would always ask that pick-up be made at a specified time. While I always indicated that we would try to have units available, I was actually able to meet fewer than half of these appointments. I was in effect attempting to meet pick-up appointments with equipment I did not have. If an owner-operator happened to call to request a trip lease, I was able to meet the requested pick-up time. However, if no owner-operator called me, I had no way of providing any equipment to a shipper requesting some sort of expedited service. Similarly, Rexco movements from my area

never operated on any sort of schedule. I never attempted to set up schedules for shippers and I was never instructed to make such an attempt by Mr. Williams. The Rexco operation from my area was a complete call and demand operation with no fixed times of movement of any sort.

In soliciting traffic, I was never concerned about whether or not REA held authority to serve a particular point of origin or destination. Mr. Williams had advised me that REA could serve all points in the United States east of Denver. Only in the case of a shipment moving to a point farther west was it necessary to check with the Philadelphia office. I was never provided with any listing of authorized points or any other material which could have been used to determine whether the REA authority permitted service to a particular customer or destination.

In the instances where I was able to obtain drivers with vehicles, these drivers were required to come to my office facility at Portage, Indiana to obtain and execute required documentation. The principal documents being prepared were trip leases of the equipment in question to Rexco. Prior to beginning operations as an agent, I had a lengthy meeting with Mr. Williams at O'Hare Airport in which the preparation of trip leases was discussed. ~~Following this meeting,~~ I ~~prepared~~ received typed instructions as to how to fill out the trip lease forms ~~based on my conversation with~~ from Mr. Williams

A copy of these instructions and a blank trip lease form are attached. As indicated on these instructions, I always signed the trip lease as Rexco's agent. During the entire course of my agency, I never was given authority in writing to act as Rexco's agent and no written agency agreement was ever signed between Rexco and I. However, I signed all documentation during this period as if I had written authority to act for Rexco. In all instances, the driver of the vehicle signed as the authorized agent of the leasing carrier. Again, I do not ever recall seeing any specific authorization permitting these drivers to trip lease vehicles to Rexco, and act on the assumption that the driver himself had authority to lease equipment to a carrier such as ourselves.

The trip lease form also contained a blank calling for a route designation. On every trip lease I executed, I typed in the notation "Regular Routes Direct." This again was pursuant to instructions from Mr. Williams. There was absolutely no attempt to indicate to drivers that REA had particular, regular routes which must be observed. The driver was completely on his own as to how he moved the load from origin to destination. I, myself, was never aware of what highways the REA routes out of northern Indiana followed.

I was never provided with a synopsis of the REA authorities or any sort of operating map depicting such authority. As noted above, Mr. Williams had led me to believe that REA could operate anywhere and

that there was no need for any concern about the routings followed by individual drivers.

During the course of my agency, I was in contact with Mr. Williams several times a week regarding all facets of my service as a Rexco agent. I believe Mr. Williams was fully aware of all the foregoing events which are related in my testimony. In particular, he was highly active in soliciting national steel accounts such as Bethlehem Steel and United States Steel. In many instances, he would contact me regarding bookings of freight from Bethlehem Steel.

The end result of my own personal experience with Rexco was not a happy one. I advanced substantial sums of money to drivers in order to cover their expenses for particular loads, and was given numerous verbal assurances from Mr. Williams that such advances would be covered. Substantial delays occurred in the repayment of these advances. Moreover, a large sum is still owing to me in unpaid commissions on freight which my agency solicited. Many owner-operators have complained to me that Rexco had failed to remit the percentage shares to drivers on numerous loads. I feel that Rexco and Mr. Williams have been less than honest with many individuals involved in these operations. The only reason that I stayed on as long as I did

was the continuing hope that conditions would improve within Rexco. However, conditions never did change and I was happy to see my relationship with Rexco end in February, 1976.

WILLIAM MILLER

TRIP LEASE

All trip leases are to be typed.

1. Manifest Number
2. Placard Number
3. Driver's Full Name and Address - if 2 man team both Driver's must appear.
4. Date load is picked up
5. Truck Number always use #200 if Trip Lease
6. Trailer Number always use #200A if Trip Lease
7. Same as #6 and #22 on Manifest
8. Check each line - this is a must.
9. Date and Signature of Authorized Inspector
10. Rexco Division (Typed)
11. Leave Blank
12. Leave Blank
13. Rexco Division MC#66562
14. Same as #7
15. City and State Load is picked up.
16. City and State Load is to be delivered.
17. Regular routes direct
18. 75% or flat rate figure
19. Type in see attached (Use Hour Recap Form)
20. Terminal address and Date where lease is cut
21. Same name as #7 and #14
22. Rexco Division
23. Driver's Signature
24. Agent's Signature
25. Driver's Social Security Number

6. Date and time lease is cut.

7. Rexco Division

8. Agents Signature

9. Same as #7, #14, & #21

After trip lease is cut

1) White copy to Main Office ——— Copy
2) Yellow and Golden Rod to Driver
3) Pink copy to be kept on file at terminal (3 years)

BEST COPY AVAILABLE

CONTRACT-LEASE AGREEMENT

or INTERCHANGE

No. A 34951

Driver (3) DATE: (4)

Truck No. (5) Make ____ Year ____ Serial Number ____ License Number ____

Trailer No. (6) Make ____ Year ____ Serial Number ____ License Number ____

Author zed (7)

Owner ____ Address ____

REPORT OF VEHICLE INSPECTION

Indicate the result of the inspection of each item listed:

Item - Description of Defect	Item - Description of Defect	Item - Description of Defect
Brakes (8)	Glass	Steering
Cooling System	Horn	Tires
Drive Line	Leaks	Wheels
Emergency Equipment	Light (which?)	Windshield Wiper
Engine	Reflectors	Any other item requiring attention:
Exhaust	Speedometer	
Fuel System	Springs	

I hereby certify that on the ____ day of ____, 19 (9) I carefully inspected the equipment described above and that this is a true and correct report of the result of each inspection.

(Vehicle Inspector Sign) ____

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of: (10)

Name of Authorized Carrier

Date (11) (12)

Signature of Authorized Carrier or Co Partner or Officer of Authorized Carrier

THIS AGREEMENT by and between (13), hereinafter called First Party, and (14) hereinafter called Second Party

WITNESSETH

WHEREAS First Party is a Motor Carrier engaged in the transportation of property for Hire in Interstate Commerce pursuant to authority granted by the Interstate Commerce Commission, and

WHEREAS Second Party is the Owner and Operator of the Motor Vehicle Equipment, hereinafter more fully described, and desires to lease and hire said motor vehicle equipment to First Party for the purpose of transporting freight thereon over the certified routes of said First Party in accordance with the Terms and Conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

Second Party does hereby lease to First Party the following described Motor Vehicle equipment as described above. The said equipment shall, during the term of this lease, be deemed to be under the exclusive possession, control and use of the Lessee (except that Lessor reserves the right to sub-lease said equipment). Lessor shall not use said equipment for his own use or benefit during the terms of this lease.

Said leased motor vehicle equipment will be operated by Second Party, his agent or employees, over the certified routes of First Party, as specified and designated by First Party.

FROM (15)

VIA ROUTE (17) TO (16)

It is further understood that this lease shall terminate when said equipment arrives at destination indicated above and unloaded.

First Party hereby agrees to pay Second Party compensation for the use of said motor vehicle and the transportation service performed. Compensation shall be (18)

Second Party agrees that he will at all times during the existence of this agreement keep said motor vehicle in good condition and repair, and that he will pay for any and all costs and fees of any kind nature whatsoever which are necessary for or arise from the operation of said motor vehicle throughout the term of this agreement between the above named points.

Second Party further agrees that he will at all times during the existence of this agreement comply with all laws, rules and regulations of the Interstate Commerce Commission or any State Authority or Governmental Agency having jurisdiction over the operation of motor vehicles, and that he will comply with all applicable laws and regulations with respect to Workman's Compensation Insurance, assume full responsibility for payment of all State and Federal Taxes, if any, for unemployment insurance, old age pensions, or other social security or withholding tax laws as to all persons engaged in the performance of this contract, it being understood and agreed that the relation between First Party and Second Party shall not be that of Employer Employee but that Second Party shall have at all times the status of an independent contractor.

Second Party agrees that he will reimburse First Party through deduction or payment for any and all shortages, loss, damage or injury to cargo while in the possession of Second Party, his agents or employees, or fines resulting from the violations by Second Party, his agents or employees, of any applicable Federal, State or Municipal Law or Regulation.

Second Party further agrees that this lease shall terminate at destination stated above and that Second Party will cause to be removed all signs, identification or other evidence of name and certificate numbers belonging to First Party, and that any signs, plates, cards, delivery receipts, log sheets and other papers will be returned to First Party immediately.

THIS DRIVER IS QUALIFIED UNDER PART 391 OF MOTOR CARRIER SAFETY REGULATIONS.

HOURS on duty for the SEVEN (7) consecutive days previous to today.

MONTH ____ DAY ____ YEAR ____

(PRESENT DATE) DAY	HOURS ON DUTY
(19)	
Before the above trip (TOTAL on Duty Hrs.)	

In witness whereof, the parties have executed this agreement at:

(20) City State

Day of ____ 19 ____

(21) Lessor (22) Lessee

By (23) By (24)

(25)

RECEIPT BY OWNER (LESSOR)

The undersigned Owner hereby acknowledges the receipt of the equipment from Carrier in acceptable condition on the ____ day of ____, 19____

____ O'clock (a.m.) (p.m.), this terminating the above set forth lease. (29)

____, Owner

RECEIPT BY CARRIER (LESSEE)

The undersigned Carrier hereby acknowledges the receipt of the equipment above described from Owner this ____ day of ____ 19 (26), at ____ o'clock ____ M.

(27)

____, Lessee-Carrier

STATEMENT OF STANLEY BROWN

My name is Stanley Brown, and I reside at 20218 Martinsville Road, Belleville, Michigan. My business address is 5000 Wyoming Avenue, Dearborn, Michigan. From ~~September~~ Dec 3, 1975 through April, 1976, I served as an agent for the Rexco Division of the REA Express, Inc. for Detroit, Michigan and its surrounding area. In my capacity as a Rexco agent, I became very familiar with the Rexco operation. In particular, I had numerous conversations concerning Rexco with Mr. Donald W. Williams, its General Manager.

For the past 14 years, I have been in business in the Detroit area as an agent for various motor common carriers. I have maintained my present office location in Dearborn, Michigan during that period of time. The office is located in the Truck City building adjacent to U.S. 12 in Dearborn, Michigan. Between 30 and 40 carriers have agents maintaining offices in this building. Truck stop facilities are also provided at the building, and Truck City serves as a point of exchange for owner-operators seeking loads from the carriers in the building. The office space which I rent is a one-room facility with clerical equipment, telephone lines, and a teller window for driver inquiries.

My service as a Rexco agent began in late ~~Sept~~Dec ember, 1975. I learned that Rexco was seeking agents for freight solicitation and movement of loads by owner-operators. I contacted Mr. Williams and arranged to travel to Philadelphia to discuss Rexco with him. Mr. Williams had a small office in an outlying part of Philadelphia, staffed by his wife and two or three other persons.

In our discussion, Mr. Williams advised me generally that I was to be the Rexco agent for the Detroit area and was to solicit freight and execute trip leases on behalf of Rexco. I was provided with a copy of the Rexco Commodity Tariff 85 and also a one-page sheet summarizing the rates in that tariff. Mr. Williams advised me that I should solicit truckload freight moving outbound from the Detroit area and obtain owner-operators to move this freight on a trip lease basis. Mr. Williams stated that the Rexco rates were much lower than the truckload rates of other carriers, and that it would be easy to use these rates to obtain freight from local shippers.

When I asked Mr. Williams about the scope of authority under which I was to be agent, he explained that the authorities of REA Express, Inc. authorized the transportation of all types of commodities on any type of equipment. He also stated that REA held authority to transport freight between any two points in the entire United States east of a line running through the Rocky Mountains. He provided me with a United States map showing Rexco's authority,

with a specific line drawn through Denver, Pueblo, and El Paso. I have the copy of this map which he gave to me in my possession and am attaching a xeroxed copy of it to this Statement. I subsequently drew a specific map for my own staff based on the map given to me by Mr. Williams, directing service to all cities and states east of this line. Mr. Williams never advised that REA had any specific described routes or gateways which it was required to observe under its authorities from the Interstate Commerce Commission. Throughout my term as a Rexco agent, I was never aware that REA was a regular route carrier under the terms of its authorities from the Commission.

When I had my initial conversations with Mr. Williams, I was then serving as an agent for another carrier at Detroit. This carrier has authority to move freight to areas of the East, Midwest, and Far West. I continued to serve as agent for this carrier while I was a Rexco agent, with Mr. Williams' full knowledge and approval.

My duties as a Rexco agent were similar to those that I have performed as an agent for other carriers at Detroit. I solicited freight for Rexco through contacts of mine in the Detroit area, including a large automotive account shipping auto glass from Detroit to southern and southwestern states. In addition, as time went on, shippers began to call me and request that their traffic be routed Rexco. The traffic being handled was all truckload freight and consisted of such items as machinery, lift trucks, iron and steel articles, oil, and plastics. Approximately 50% of

the loads moved during my agency moved on flatbed equipment. I do not recall moving any shipments in which multiple pick-ups were involved, and only a few of the shipments moved involved multiple deliveries. There were no Rexco facilities for the handling of freight across the dock during my term as agent and consolidation. Handling of LTL freight was not a Rexco service.

I arranged for the movement of freight under the Rexco authority through driver contacts who came to me looking for loads. As indicated, many owner-operators terminating in Detroit come to the Truck City facility and go from carrier to carrier seeking loads. I also know a number of owner-operators who live in the Detroit area. During the years I had been a freight agent at Detroit, I have worked to develop a good reputation with the drivers. There are many drivers who come to our office window seeking loads to various points. I have always dealt openly and fairly with drivers and seen to it that they have been paid their proper revenues. For this reason, I initially was able to obtain numerous drivers to handle Rexco loads on a trip lease basis.

As time went on, it became more and more difficult for me to obtain drivers to run under the Rexco authority. Initially, Rexco's rates were well below those of other carriers. Thus, a driver running for Rexco would earn substantially less on a particular movement than a driver running under the authority of another

carrier. Word of this circulated among the drivers, and Rexco freight soon became very undesirable freight to handle. Moreover, at the same time, a number of the drivers began to report problems in collecting their proper percentages from Rexco. This again served as a factor to discourage drivers from taking Rexco loads.

For these reasons, only drivers who were in urgent need of obtaining loads would trip lease their units to Rexco. It was virtually impossible to get an owner-operator based in Detroit to accept Rexco traffic. Such drivers could not afford to take a Rexco shipment to a distant point and then risk having to deadhead for a considerable distance without additional revenue. There simply was not enough margin in the Rexco percentages and rates to make these loads attractive on a front-haul basis. Only if a driver knew of a particularly lucrative backhaul available to him would a local driver accept a Rexco load. In one particular instance, certain Detroit-area drivers accepted Rexco loads to Laredo, Texas, because of a particularly lucrative return backhaul from that point. However, I was never able to rely on a pool of Detroit-area drivers to provide equipment for the Rexco operation.

Even among the out-of-town dirvers, who needed trip leases to get their units back to point of origin, Rexco movements were difficult to sell. On weekends or holidays, some drivers would accept Rexco shipments merely as a means to get their vehicles back

to origin without too extensive a loss of money. Other drivers would accept Rexco freight in desperation if they had been unable to obtain any other loads in Detroit for a period of several days.

Rexco's unpopularity among the owner-operators made it very difficult to provide any sort of responsive service to shippers. I recall one large movement from an oil company at Woodhaven, Michigan which sought Rexco's service. This movement involved a projected total of 60 to 70 loads moving over the course of a one to two month period. The commodity involved was cartons of synthetic motor oil products. The company had a specific schedule of distribution in mind and asked Rexco to handle the movement. I initially made an effort to find drivers to meet the pick-up times requested by this shipper. However, we were unable to even come close to meeting the pick-up times requested. The shipper became very upset with us and called continually to complain about missed pick-ups. Finally, I was forced to advise the shipper that we simply could not meet the pick-up times which he required for the handling of his products. Accordingly, the entire movement was lost to us and we were able to move only ten of the 70 available loads.

In another instance, a shipper contacted me and stated that he wanted several units on an immediate, rush basis to move freight from Toledo, Ohio to Pittsburgh, Pennsylvania. The vehicles

were then to pick up a second movement at Pittsburgh and run to points further east. When the shipper called and requested this expedited service, it did not indicate that it was calling to request Rexco service. Because of the shipper's rush need to have the loads moved, I routed the shipments over the lines of the other carrier for which I was acting as agent. I had no trouble securing drivers to handle these loads, as I had several permanent lease operators available in Detroit to handle loads for this other carrier. In addition, this carrier's rates and driver payment policies made it easy to obtain trip lease operators. The shipper later contacted me and asked why I had not routed the loads via Rexco. I advised him that with Rexco's equipment situation, there would have been no way that the loads in question could have been moved on the immediate, rush basis with which he had requested. The shipper was upset that he had not obtained the low Rexco rate, but ultimately paid the freight charges on the movements in question. Thus, for this shipper and for others, a more expeditious service was available through the other regular and irregular route carriers having authority to serve their facilities. Rexco service was slower and offered only the advantage of cheaper rates for the shipper.

During my service as a Rexco agent, I never attempted to set up scheduled operations to any point. On occasion, various customers would call and ask that a unit be brought to their facili-

ties by a certain time in the morning. If I could find available drivers with equipment, I was able to keep such appointments. However, when drivers became uninterested in Rexco, I was no longer able to fulfill appointments with my equipment. Mr. Williams never advised me that I was required to begin a scheduled service between any two points, or that such a service was a necessary part of the operators under the REA authorities. The service which I provided in the Detroit area was an unscheduled, call-on-demand service, dependent upon the availability of drivers to enter into trip leases.

In trip leasing units to Rexco, it was of course necessary to have a vehicle inspection performed by an authorized inspector. Mr. Williams advised me that I should not employ an outside garage to act as inspector of the vehicles. Rather, I was to sign the vehicle inspection forms myself. However, I saw no problem in this, as I am well qualified to inspect the mechanical operating condition of motor vehicles. I made sure that I personally inspected all of the vehicles leased to Rexco, as has been my practice during my service as agent for other carriers.

I never made any attempt to advise drivers of specific routes they should follow. Mr. Williams had assured me that Rexco held authority to serve all points in the eastern two-thirds of the United States. As I indicated previously, he had given me a hand-drawn map illustrating this authority. I had no reason to believe

he would misstate or misrepresent the nature of the REA operating rights. I never was aware that Rexco might be required to observe certain regular routes or gateways on movements outbound from Detroit. Mr. Williams never gave me copies of the REA operating authority or any other explanation of this authority. The only such documents provided to me were certificates of registration of this authority with the State Commissions in various midwestern states. Mr. Williams did instruct me to route drivers so as to avoid the entire state of Arkansas. He stated that Arkansas was challenging Rexco's authority to operate and that trip leased units should avoid the state entirely. However, other than for loads in the direction of Arkansas, I left it completely up to the individual drivers as to the route they would observe in moving freight for Rexco.

Rexco had no system for exercising control over the movements of drivers once they had left the agency station. There was no system during my term as agent by which drivers were instructed to call in to any Rexco central dispatch on any every 24-hour basis. Many carriers maintain such a system for keeping track of equipment flow, but Rexco did not follow this practice. In the event of mechanical breakdowns, the drivers were instructed to call me rather than Rexco in Philadelphia. During the latter part of my agency, drivers were also given the number of an insurance company

in Indianapolis to call in the event of damage to freight. Following completion of their movement, the drivers were required to send in their logs and various other documents to Philadelphia, in order to be paid for the movement of freight.

In late April, 1975, I was dismissed as Rexco's agent for Detroit. The explanation given for my dismissal was a dispute between Mr. Williams and I regarding a particular shipment, in which I separately billed the shipper for rigging service which local drivers performed on ~~a~~ three truckloads of machinery. However, I feel that Mr. Williams used this as a pretext for dismissing me, as a relative of another Rexco agent was given the Detroit agency immeidately. Rexco still owes me a substantial sum of money for unpaid commissions and unreimbursed advances to drivers.

STANLEY BROWN

STATEMENT OF WILLIAM COATES

My name is William Coates, and my business address is Box 11, Adamsburg, Pennsylvania. From March, 1976 through approximately June 20, 1976, I served as an agent for the Rexco Division of REA Express, Inc. for the Pittsburgh metropolitan area. I was personally involved in all facets of the operation of our Rexco agency, including obtaining of freight, obtaining of drivers, and preparation of related documentation.

For the preceding eight years, I have engaged in the motor carrier business in the Pittsburgh area. Together with other members of my family, I have maintained an agency station at Adamsburg, Pa., serving as agent for various carriers. Adamsburg is located adjacent to the Pennsylvania turnpike, approximately 30 miles east of Pittsburgh. My place of business is a two room office facility equipped with telephone lines and clerical equipment. It is located adjacent to a large truck stop facility at which numerous carriers maintain agency stations through individual freight agents.

During my service as a Rexco agent, I was also serving as an agent for two other carriers as well. My duties as a Rexco agent required me to solicit freight from shippers in the Pittsburgh area. This freight consisted of commodities which normally move in

truck load lots in van equipment. Virtually all of the traffic which our agency obtained for Rexco was traffic of five or six local shippers, who gave us loads for Rexco when we had equipment available. Rexco's main selling point to shippers was its low rates. Despite the fact that we had considerable difficulties in obtaining equipment to move Rexco loads, our customers continued to call us to request Rexco service. Often, they would hold assembled shipments for as much as three to four days in order to obtain access to Rexco's low rates.

In serving as an agent for other carriers, I have owner operators available in the Pittsburgh area which lease their equipment to these carriers for the movement of freight. However, in obtaining equipment to move Rexco loads, I relied exclusively on trip lease to drivers from other areas. Rexco had no permanently leased operators that I was aware of. On occasion another Rexco agent would call and advise that certain trip leased units were terminating in our area but most of our equipment was obtained independently from terminating drivers.

With Rexco's low rates, the percentage revenues received by owner operators were substantially lower than those received through lease to other carriers. Thus, most owner operators were unwilling to trip lease to Rexco under normal circumstances. The great majority of the drivers I was able to obtain for Rexco were out of town drivers from western or southwestern states looking for return

loads back to their home areas. The greater part of our loads were long-haul movements to points west of Chicago. On shorter hauls, driver revenues were so small that in most instances, drivers would prefer to run empty back to their home areas.

When we became Rexco agents, I met with Mr. Donald Williams, Rexco's General Manager, and discussed the Rexco operation. At this meeting, Mr. Williams gave me a map which he indicated showed Rexco's authority. This was a map of the entire United States which had a heavy black line drawn roughly through Denver and Albuquerque. All points east of this line were stated to be points which Rexco was authorized to serve. In addition, the map showed service authorized to certain western cities such as San Francisco. Mr. Williams gave no indication that any particular routes or gateways were required to be observed. Based on this map, I felt that Rexco could handle traffic to all points in the eastern two thirds of the United States.

After our initial solicitation of customers, these customers generally called us to request Rexco service. Our ability to provide such service was completely dependent on obtaining trip lease drivers to handle the Rexco loads. As I indicated above, Rexco movements were not attractive to most owner operators. Accordingly, we often experienced difficulty in obtaining drivers to meet shippers requests. I would estimate that in no more than 30 to 40 percent of the cases were

we able to provide equipment to meet the requests of our customers. Moreover, considerable delays often ensued before a unit could actually be found to meet a specific request. I recall instances where shippers held loads on their docks from three to four days before we were able to find a truck to be trip leased to Rexco for the movement of the shipper's freight. We did not operate any sort of scheduled service for Rexco and we were not advised that we were required to.

When drivers were found to move the Rexco loads, the drivers would come to our agency station at Adamsburg and fill out the necessary trip lease forms. We performed a vehicle inspection, executed the trip lease on behalf of Rexco, and instructed the driver as to where to pick up the freight. The driver was not required to call in to us or to any Rexco central dispatch location to report his whereabouts after picking up the shipment. To my knowledge, Rexco did not maintain any central dispatch facility at which the location of a particular unit could be determined. The traffic which our agency handled for Rexco did not involve any out of the ordinary services by the trip leased drivers. Virtually all of the shipments were full truck load lots of truck load type van freight.

My reason for terminating the Rexco agency in June of 1976 was the substantial delays we encountered in receiving any commissions

for our services from Rexco. Rexco did not pay us our commissions until they received payment from the shipper. In essence, this allowed Rexco to do business with very little capital expenditure based on our willingness to wait several months for the payment of monies due to us. Rexco even managed to avoid paying the telegraph fees for wiring advance monies to drivers, as four dollars was taken out of each driver's advance to cover the cost of the telegram. Ultimately, we terminated the Rexco agency and were left with a substantial outstanding debt from Rexco. Some of this money has since been repaid to us.

_____

William Coates

STATEMENT
OF
JOHNNIE B. HUNT

My name is Johnnie B. Hunt and my address is P.O. Box 200, Lowell, Arkansas 72745. I am President of J. B. Hunt Transport, Inc. During the period of October, 1975 through January 15, 1976, I acted as an agent for Rexco. Rexco is in my understanding, an operating division of REA. My initial contact with Rexco came through information provided me from a Rexco agent in Minnesota.

During the period that I was a Rexco agent I did not have a written agency agreement. My oral agreement was that Rexco would pay its agents 7% of the revenue derived in operations. The owner operator or other entity providing the transportation would receive 75%. The remainder of the revenue would go to Rexco. The equipment was to be obtained by the agents. These could be be owner-operators, motor common or contract carriers. Rexco would provide insurance and pay claims. Additionally Rexco would pay for state permits and state taxes. Leases on the equipment were to be prepared by the agent. The drivers were, in instances in which I was involved, owner-operators. The over the road expenses were paid by myself as well as any other advances necessary. Rexco later reimbursed me for some of the advances made.

The solicitation of traffic was made entirely by myself or my employees as agent. For the most part we would handle any traffic but were concerned primarily with truckload. In my operations we did not handle any appreciable LTL traffic. Our promotional efforts were centered around rates. Generally we asserted that we could provide service at cheaper rates than other common carriers. LTL traffic was handled primarily to finish out a load. In my operations we did not handle any LTL traffic other than to finish a load.

In operating for Rexco I employed three salesmen and they were paid by myself as Rexco's agent. These salesmen were located in Dallas, Texas, Little Rock and Lowell, Arkansas. I am not aware of any advertising actually done by Rexco as the principal. Generally, I was on my own as far as developing traffic.

Regarding consolidation of LTL traffic, we as agents never arranged for that. A consolidation of LTL shipments was, in our instance, never performed. We did have occassion where stop offs would be made on route. These stop offs were one consignor, one consignee traffic and were rated accordingly.

I never received any instructions from Rexco for the acceptance of LTL freight from multiple shippers on any one Rexco trip. LTL traffic, as I stated before, was only handled in filling out a load and rarely at that.

In operating we were essentially autonomous of Rexco. My duties were to solicit the freight, obtain the trucks and then prepare the various leasing and shipping documents. As far as routing the traffic was concerned, the instructions were to take the most direct route available. The only restrictions regarding territorial operations were verbal instructions received from Don Williams of Rexco and a map I had him mark. Mr. Williams, the Rexco manager, told me not to run west of Colorado except in the northern states. Except for excluding the southern states west of Colorado, we were not given any routes to follow. The exact Rexco routes were not explained to me and the operation was conducted as an irregular route operation over the most direct route available. The only governing criterion for route taken was the shortest, most economical distance in the area of operations. As Rexco's agent, I gave these instructions to the drivers.

None of the traffic handled by my company moved between other Rexco terminals. The traffic moved from origin to destination and there was no consolidation, break bulk or intermediate stop for transportation service. Vehicles were not dispatched to any designated Rexco facility near the destination area of the shipment. This method of operation was the same regardless of the distance involved.

Just as there was no set route followed for the transportation, there was no regular schedule of pickups. We would pick up the traffic when it was available and deliver it directly to the consignee when we arrived at destination. This was true regardless of the customer involved or the frequency of his movements. Ours was an on-call-service with no prearrangement. We did not move a load unless we had a full truckload and our rates were such that any movements less than full 40,000 pounds truckloads recovered charges equal to full truckload rates. This was a matter of operational economics. The small amount of LTL traffic we had was used to fill out a load and merely additional profit for the movement. I did not have a Rexco schedule to operate from and, to my knowledge, there is no Rexco time schedule for operations. When a vehicle was dispatched to a distant point, we did not stop at intermediate points to see if our equipment could be used to facilitate other Rexco traffic. Pick ups and deliveries were not scheduled or prearranged and to the best of my knowledge, Rexco does not have any prearranged schedule.

Our facilities in Dallas, Little Rock and Lowell, Arkansas were listed in the telephone directory. The physical plant at those offices consisted only of office personnel and equipment. We did not have a terminal facility with loading dock or packing or facilities for handling freight at those

points. These were freight solicitation points and there were no facilities for equipment maintenance.

The only instructions I received regarding the method of operation were verbal instructions from Don Williams, Rexco's general manager. These were given to me before agreeing to become an agent. The instructions were vague and as far as operations were concerned, the main interest was getting as much traffic as possible and any means necessary to do that was countenanced. Our primary interest was truckload as that is the most profitable. No timed deliveries as I mentioned earilier were provided customers. We would load as soon as I could locate a truck and get it trip leased to Rexco. The only determining factor regarding how long it took to provide service was how long it took to get a vehicle.

We kept copies of dispatch logs and sent them to Rexco's office. We would accept traffic which could not be handled in ordinary van equipment. We solicited any traffic we could get. We did not have any instructions from Rexco regarding freight which could not be handled in ordinary van equipment. The main concern was locating this other equipment. If we could locate the equipment and had the traffic, we would move it. I do not know of any movements we had which had a prior or subsequent movement by rail. Some of these could have moved by rail at an earlier or later time, but I do not know of any

specific instances. On occassion we did refuse some movements. This was because of either lack of equipment or because of the commodity involved. Among the commodities we refused to move were precious jewelry, human remains, bulk commodities, or the commodities which were either excluded from our operations or unattractive.

As far as caring for or safeguarding freight, there were no unusual steps taken in our operations. Movements were made in the same manner as made by any general commodity carrier. The traffic did not differ from that nor did the service differ from that provided by any motor carrier of general freight.

I did have a copy of Rexco's tariff I.C.C. 153 and revisions so that traffic could be rated. I also have a copy of the Household Goods Mileage Guide to quote rates. I did not have a copy of Rexco's operating authority. I operated under the general instructions of Don Williams to provide any service asked for east of Denver. We accepted traffic which was destined for less than 200 miles but charged the 200 mile rate. The rates involved generally called for the same charges for LTL as truckload. By this I mean that if we had a shipment consisting of say 20,000 pounds, multiplying it out, the actual charge made would be the same as had the shipment been 40,000 pounds for the distance. Certain articles as I discussed earlier were not carried because of tariff limita-

tions. I was advised that we could not haul human remains, valuable items, such as precious metals and jewelry under the tarrif. We did not collect the freight charges. They were collected by Rexco from Philadelphia.

We got our drivers and equipment primarily from local truck stops in the area. We quoted these owner-operators 75% of the revenue as their share. These owner-operators received the same share as any other persons providing equipment.

In leasing these owner-operator vehicles, they were inspected by us as agents. I received verbal authorization from Rexco appointing my agency as an inspector. We used our own format for inspecting the vehicles and cutting leases. We placarded the equipment as Rexco. These placards were received from Rexco and paid for by Rexco.

Regarding the Rexco operations, generally there was no difference between this and any other general commodity carrier. While I received some instructions from Don Williams in Philadelphia it was a general outline. No Rexco or REA employees ever visited our operations. The guiding instructions were the territorial instructions of Don Williams and the tariff. As long as I operated east of Denver and complied with the restrictions in the tariff concerning certain commodities Rexco was satisfied.

During the period I operated as a Rexco agent, over 200 shipments were handled. This was handled mostly in van equipment and also flatbeds. I ceased being a Rexco agent January 15, 1976.

VERIFIED STATEMENT
OF
JOHN SANDS
PAUL'S TRAFFIC AGENCY

My name is John Sands and I am a partner in Paul's Traffic Agency, P. O. Box 374, Pautucket, Rhode Island 02862. I have been asked by complainants in this proceeding to discuss my relationship with Rexco an operating division of Railway Express Agency.

During the period of August through December, 1975 my company acted as an agent for Rexco. In December of 1975 we terminated our agency relationship with Rexco because of a phone call we received indicating that Rexco did not have any insurance in effect. During the period of our relationship we solicited and arranged for the movement of 105 truckloads of traffic. This traffic consisted of iron and steel articles, chemicals, paper products, and general freight. All of this traffic moved in truckload quantities. We did not handle any LTL traffic. Also, we did not handle any perishable commodities in reefer equipment under instructions from Rexco. Further, we did not handle any commodities which required special handling such as size and weight commodities.

Our relationship with Rexco was entirely verbal. We did not have a written agency agreement. We were instructed to solicit strictly truckload traffic. No LTL traffic was to be solicited. We were to pay any salesman involved in soliciting traffic.

As to routing we did not receive any specific instructions from Rexco. I inquired of Rexco what area we could operate in and Don Williams gave me a map of the United States with a line drawn through Denver. He told me that we could operate irregular route general commodity east of Denver. All instructions to the driver were given by us and generally it was to go over the shortest and best route. None of the traffic was routed through other Rexco terminals but was direct from origin to destination. Rexco did not provide us with a schedule of operations either as to times of pickup for a regular service or routes to be followed. We did keep dispatch logs regarding our traffic but did not forward them to Rexco as they did not appear to be interested.

Not all of the traffic we handled moved in van equipment. As I discussed earlier, we handled some steel articles which moved on flatbed equipment. The only traffic we refuse to handle was that which would go in reefer equipment.

As to rating, the actual rates were worked out by Rexco. We handled some short hauls under 200 miles but they were always rated as 200 miles.

Regarding trip leasing, the position of Rexco was that trip leasing could be conducted in any manner proper under DOT regulations. We trip leased on occasion from private carriers. Some of these private fleets were Purdue Farms and American Standard. We also were not prohibited against back to back trip leasing and on occasion did this.

The only written documents we ever received from Rexco was a copy of the tariff, and the map I referred to earlier indicating the territorial scope operations. We were orally told we could handle any traffic covered in the tariff.

In order to secure drivers and equipment we solicited owner-operators from truck stops. The equipment was trip leased to Rexco and as agent we inspected the equipment. No written authorization was given to us from Rexco to inspect the equipment or enter into leases on behalf of Rexco.

In summary, we entered into a verbal contract, hauled the freight and were paid a percentage of the transportation charges by Rexco after they collected from the shipper. There were no provisions regarding restrictions on entering into trip leases or routes to be followed. The only instructions were to handle all the traffic we could get that was east of Denver.

CI 56 APPENDIX 8

PREPARED
~~VERIFIED~~ STATEMENT
OF
ROY H. STEWART
STEWART TRUCKING COMPANY

My name is Roy H. Stewart and I am President of Stewart Trucking Company. My address is 100 Dargue Avenue, P. O. Box 4488, Manchester, New Hampshire 03108. During the period of September through October, 1975 I was an agent for REA's Rexco Division. In October, 1975 I was terminated by Rexco for not getting enough traffic. During this period I handled three loads for Rexco. ~~While my experience with Rexco was short lived, I believe that I got a good understanding of their operations. Generally, I would describe their method of operation as the same as any other general commodity carrier. Additionally, the best description of their program would be one of "instant freight."~~

In describing their operations as an "instant freight" operation I refer to their general operating principles. ~~Their main concern was to get freight to haul regardless of whether they had rates in effect or how the movement was transported. For example,~~ After I signed on as a Rexco agent and before we even had freight bills or leases Rexco wanted us to begin hauling traffic. When I questioned Don Williams at Rexco about this he said not to worry, just haul the freight.

While I operated as a Rexco agent we had no written agency agreement. The instructions from Rexco were primarily verbal and no operating authorities were received although I requested them. Regarding these general instructions we were told not to solicit less than truckload traffic and to stick with truckload traffic. To the extent we could accept less than truckload traffic it actually worked out to be rated the same as truckload traffic. For example, the rates I was provided with worked out to be the same ultimate charge regardless of whether it was a 16,000 or 20,000 or 24,000 pounds or truckload movement. A review of Rexco's rates indicates that when the minimum weight is multiplied by the rate the total charge is the same as the next higher minimum weight times the next rate. So that the rate for any movement worked to be approximately the same charge for the distance and commodity regardless of how the minimum was actually set up.

Low rates were our main selling point. I have attached as Appendix A a letter which I sent out regarding rates. That letter sets out our rates scale with, of course, the exception of explaining that the ultimate charges are always the same.

In soliciting traffic we, as agents did all of the work and used our own employees. I was concerned with the scope of operations allowed under Rexco's authority and requested copies of the authorities from Don Williams. He did not provide those but sent me a map showing the area of operations. I have attached a copy of that map as Appendix B. We were told that operations could be

conducted anywhere east of the line going through Denver. We were not given any routes which had to be followed. We were told that routing was to be made in the most direct manner. Everything regarding routing was left to the agent. Also we were not given any time schedule to follow. Ours was a call-on-demand type irregular route general commodity service east of Denver.

Any instructions given the drivers were given by our company as agent and these instructions were to follow the shortest and best route. The traffic was not routed via other Rexco terminals and was routed straight through from origin to destination. All of our movements were on a trip lease basis. Dispatch logs were not kept.

During our short association with Rexco we handled a total of three shipments. These were all movements of granite. These movements were on October 3, 6, and 8, 1975. All of these movements moved on flatbed equipment. I was concerned that Rexco did not have any rates covering these movements. I sent Rexco a message (Appendix C) regarding rates prior to moving these shipments. I also called Rexco's facilities in Philadelphia and asked what to do regarding these granite movements. They moved as building materials, NOI and I suggested that a stone item should be added to the tariff. ~~In this discussion with Rexco I got the definite impression that they did not care if actual rates were in effect or~~ not." I was told to move the shipment and they would determine rates later. This opinion was later confirmed in a movement of water and a movement of beer. I was attempting to get

these movements as a Rexco agent. When I contacted Rexco and told them that I believed they had no items to cover beer or water, I was told not to worry but to solicit the traffic anyway. We did not get the movement however, and for that reason did not carry it. ~~However, this instance confirmed my suspicion that the Rexco operations were being conducted in a very lax manner.~~

Another matter of concern to me was Rexco's trip leasing. I contacted Rexco regarding back to back trip leasing and trip leasing to private carriers. While we did not trip lease to private carriers I was told by Don Williams that it was alright and that back hauling on a trip lease was proper. He sent me a copy of the Code of Federal Regulations and said that as an express company they were exempt. We did not trip lease from private carriers on the three movements I've discussed. It is my understanding however, that return movements were made by the same flatbeds used in these movements or, in other words, back to back trip leasing.

Regarding the Rexco operations we received no specific instructions other than the territorial map I discussed earlier and instructions to take the shortest and best route. The owner-operators we used were supervised by our company. There was no regular schedule established by Rexco and we were basically on call at all times. The only time we refused service would be if equipment was not available or if the commodity was specifically embargoed in the Rexco tariff. We got our drivers and the equip-

ment by contacting truck stops or placing an ad in Transport Topics.

The equipment was inspected by us as agents. We did not, however, have any written authorization to inspect the equipment. Nor, did we have any written authorization to lease equipment on Rexco's behalf. I asked Don Williams about this and he said that he would not send a written authorization to lease on Rexco's behalf. Everything that we were involved in with Don Williams with the exception of my correspondence, the map, and his reference to the trip lease exemption was all verbal.

In summary, ~~my short association with Rexco indicated that their main concern was to get as much traffic as quickly as possible. There~~ was a complete lax regarding rates and operations. The bulk of our understanding was verbal. We operated the same as any other general commodity irregular route motor carrier except there was little direction from the main office of Rexco.

App A.

STEWART TRUCKING CO., INC.

MAIN OFFICE: P.O. BOX 504 • LONDONDERRY, NEW HAMPSHIRE 03053 • A/C 603-668-0250

Date

xxxxxxxxxx
xxxxxxxxxx
xxxxxxxxxx
xxxxxxxxxx

REXCO DIVISION OF REA

We are pleased to announce that we have been appointed Commission Agent in Maine, New Hampshire and Vermont for the REXCO Division of REA Express, Inc.

REXCO is the truckload division of REA, offering direct service on general commodities to all points in all states East of the Rockies, and to major points in the eleven Western mainland states.

REXCO's rates are very attractive. Check the enclosed Commodity Descriptions, Application of Rates, and Table of Distance Commodity Rates, and we think you will agree.

In the event you are unable to make full trailerloads to just one customer, stop-offs are permitted to 2 stops plus the final destination. The cost is $35.00 for each stop, not including the final destination. Mileage would be to the most distant point via the stop-off point or points.

REXCO provides $2 million coverage on both Cargo and PL&PD.

If you will tell us the points to which you ship in truckload lots, we should be happy to give you rate quotations.

We hope you find REXCO's rates and service of interest. When you are ready to ship, call DISPATCH at (603) 668-0250, preferably a day or two in advance. We look forward to serving you.

REXCO Division, REA Express, Inc.
STEWART TRUCKING CO., Inc., Agent

Roy H. Stewart, President

RHS/xxx

TO: TED WILLIAMS
REXCO INTERNATIONAL EXPRESS
8001 ROOSEVELT BLVD
PHILADELPHIA, PA

FROM:
- ☐ Truk-Away Service
- ☐ Stewart Leasing Company, Inc.
- ☒ Stewart Trucking Co., Inc.
- ☐ Northeast Handling Systems, Inc.

P. O. Box 235, Londonderry, N. H. 03053

SUBJECT: STONE

DATE: 9/13/75

v.i.p. speedy reply message

MESSAGE

SUGGEST YOU ADD STONE (PER ATTACHED) TO YOUR BUILDING MATERIALS ITEM 580 (40M MIN WT), OR SET UP A NEW ITEM. WE HAVE QUOTED A COUPLE GRANITE MOVES USING "PAVING BLOCKS OR SLABS" IN ITEM 580, BUT YOU COULD BE QUESTIONED, HENCE MY SUGGESTION.

Roy

REPLY

DATE OF REPLY

SIGNED

REPLY TO

RECIPIENT

SIGNED

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YELLOW COPY

DETACH AND FILE FOR FOLLOW-UP

BEST COPY AVAILABLE

CONTRACT-LEASE AGREEMENT (Use APPENDIX 9)

or INTERCHANGE

BEST COPY AVAILABLE

No. A 30725

Driver FRED LEGGETT DATE: 11/14/75

Truck No. 18 Make INT'L Year 1974 Serial Number 11962 License Number YH17-644 VA.

Trailer No. 39 Make CLARK Year 1975 Serial Number M-75 0413 License Number D 69903 N.C.

Authorized Owner EARL HAINES INC. Address BOX 841 , WINCHESTER, VA.

REPORT OF VEHICLE INSPECTION

Indicate the result of the inspection of each item listed:

Item - Description of Defect		Item - Description of Defect		Item - Description of Defect	
Service Brakes	adj	Glass	ok	Steering	ok
Coupling System	ok	Horn	ok	Tires	ok
Drive Line	ok	Leaks	ok	Wheels	ok
Emergency Equipment	ok	Light (which?)	ok	Windshield Wiper	ok
Engine	ok	Reflectors	ok	Any other item requiring attention:	none
Exhaust	ok	Speedometer	ok		
Fuel System	ok	Springs	ok		

I hereby certify that on the 14 day of NOVEMBER, 1975, I carefully inspected the equipment described above and that this is a true and correct report of the result of each inspection.

(Vehicle Inspector Sign) ☞ Robert V. L. Funk

I hereby certify that on the date stated above the person who made the inspection covered by this report was competent and qualified to make such inspection and was duly authorized to make such inspection as a representative of:

REA EXPRESS REXCO DIVISION
Name of Authorized Carrier

Date NOVEMBER 14, 1975

Earl Haines (B.J.)
Signature of Authorized Carrier or Co-Partner or Officer of Authorized Carrier

THIS AGREEMENT by and between REA EXPRESS, REXCO DIVISION hereinafter called First Party, and EARL HAINES INC. hereinafter called Second Party

WITNESSETH

WHEREAS, First Party is a Motor Carrier engaged in the transportation of property for Hire in Interstate Commerce pursuant to authority granted by the Interstate Commerce Commission, and

WHEREAS, Second Party is the Owner and Operator of the Motor Vehicle Equipment, herein after more fully described, and desires to lease and hire said motor vehicle equipment to First Party for the purpose of transporting freight thereon over the certified routes of said First Party in accordance with the Terms and Conditions of this Agreement. Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

1. Second Party does hereby lease to First Party the following described Motor Vehicle equipment as described above. The said equipment shall, during the term of this lease, be deemed to be under the possession, control and use of the Lessee (except that Lessee reserves the right to sub-lease said equipment). Lessor shall not use said equipment for his own use or benefit during the terms of this lease.

2. Said described motor vehicle equipment will be operated by Second Party, his agent or employees, over the certified routes of First Party, as specified and designated by First Party.

FROM WINCHESTER, VA.

VIA ROUTE IRREGULAR TO NEWARK DEL. & MILTON PA. & RETURN TO MARTINSBURG W.V.

3. It is further understood that this lease shall terminate when said equipment arrives at destination indicated above and unloaded.

4. First Party hereby agrees to pay Second Party compensation for the use of said motor vehicle and the transportation service performed. Compensation shall be

5. Second Party agrees that he will at all times during the existence of this agreement keep said motor vehicle in good condition and repair, and that he will pay for any and all costs and fees of any kind or nature whatsoever which are necessary for or arise from the operation of said motor vehicle equipment between the above named points.

6. Second Party further agrees that he will at all times during the existence of this agreement comply with all laws, rules and regulations of the Interstate Commerce Commission or any State Authority or Administrative Agency having jurisdiction over the operation of motor vehicles, and that he will comply with all applicable laws and regulations with respect to Workman's Compensation Insurance, assume full responsibility for payment of all State and Federal Taxes, if any, for unemployment insurance, old age pensions, or other social security or withholding tax laws as to all persons engaged in the performance of this contract, it being understood and agreed that the relation between First Party and Second Party shall not be that of Employer-Employee but that Second Party shall have at all times the status of an independent contractor.

7. Second Party agrees that he will reimburse First Party through deduction or payment for any and all shortages, loss, damage or injury to cargo while in the possession of Second Party, his agents or employees, or fines resulting from the Violations by Second Party, his agents or employees, of any applicable Federal, State or Municipal Law or Regulation.

8. Second Party further agrees that this lease shall terminate at destination stated above and that Second Party will cause to be removed all signs, identification or other evidence of name and certificate numbers belonging to First Party, and that any signs, plates, cards, delivery receipts, log sheets and other papers will be returned to First Party immediately.

THIS DRIVER IS QUALIFIED UNDER PART 391 OF MOTOR CARRIER SAFETY REGULATIONS.

HOURS on duty for the SEVEN (7) consecutive days previous to today.

MONTH NOVEMBER DAY 14 YEAR 1975

(PRESENT DATE)

DAY	HOURS ON DUTY
13	3
12	10½
11	5½
10	8
9	0
8	2½
7	9

Before starting above trip (TOTAL on Duty Hrs.) 48½

In witness whereof, the parties have executed this agreement at

WINCHESTER, City VIRGINIA State

14 Day of NOVEMBER 19 75

EARL HAINES INC. Lessor

By Fred Leggett

REA EXPRESS REXCO DIVISION Lessee

By Earl Haines

RECEIPT BY OWNER (LESSOR)

The undersigned Owner hereby acknowledges the receipt of the equipment from Carrier in acceptable condition on the _____ day of _____, 19____

at _____ O'clock (a.m.) (p.m.), this terminating the above set forth lease.

_____, Owner

Owner, (Agent) Sign ☞ _____

RECEIPT BY CARRIER (LESSEE)

The undersigned Carrier hereby acknowledges the receipt of the equipment above described from Owner this 14 day of NOVEMBER, 19 75, at 3:30 o'clock P.M.

REA EXPRESS REXCO DIVISION, Lessee-Carrier

Lessee, (Agent) Sign ☞ Earl Haines

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VERIFIED STATEMENT
OF
MARY ANNE CAMPBELL

My name is Mary Anne Campbell and I reside at 5411 Columbia, Hammond, Indiana. From September, 1975 until July 9, 1976, I was an employee of the Northern Indiana Agency maintained by the Rexco Division REA Express, Inc. In the course of my duities, I was familiar with the entire day to day operations of the Rexco office. I had many conversations concerning Rexco with the two agents I worked for and with the Rexco office in Philadelphia.

Prior to my employment with Rexco, I was employed by other motor carriers in northern Indiana. In September, 1975, I went to work for a new Rexco Agency set up in Portage, Indiana by William Miller. My duties with this agency involved the preparation of trip leases, freight documents, and other paper work involved in the Rexco operation. In addition, I was involved in the dispatching of equipment from time to time.

Around March 1, 1976, the Rexco Agency changed hands and John Smith became the agent. Unlike Mr. Miller, Mr. Smith was agent at several Rexco offices. As a result, he spent only a limited amount of time at the northern Indiana office. The office was moved from Portage, Indiana to Gary, Indiana and I assumed all of the duties of an agent except for sales solicitation.

The Rexco operation basically consisted of arranging for trip lease drivers to haul loads for shippers who call to request service. Rexco had no company owned equipment or permanently leased brokers. Thus, every load that moves had to be transported through the leasing of equipment to Rexco on a one trip basis. My responsibilities, after Mr. Smith became agent, consisted of talking to shippers requesting equipment, attempting to locate drivers who were willing to trip lease to Rexco, and preparing the trip leases and other forms necessary to place these drivers into Rexco's service.

The customers who called me to request Rexco's service were steel mills or other large industries in the northern Indiana-Chicago area. The commodities being transported were either iron and steel articles or other commodities which usually move in truck load lots. Approximately half of the traffic was flat-bed traffic, and the remainder moved in vans. Some of our largest customers were Bethlehem Steel, Midwest Steel, Federated Metals Division of American Smelting, Economics Laboratories, New Jersey Zinc, and American Maize Products.

To obtain drivers to move loads for Rexco, we relied on calls from drivers who happen to be passing through our area looking for loads. Mr. Miller and Mr. Smith had set up telephone lines between our office and a local truck stop. It was hoped that enough drivers would call in off the road to trip lease their units to us. However, as time went on we had severe problems

obtaining drivers to move freight. Drivers did not like to trip lease to Rexco because it was slow in paying drivers their percentage shares of freight revenues. Also, Rexco's rates were so low that drivers preferred to haul for other carriers where the same percentage split would produce much higher income.

I was never able to work out arrangements with any locally spaced drivers to haul for Rexco. Such drivers did not want to haul for Rexco on an outbound basis at its low revenues, and then be faced with accepting another low-paying load on return as well. Thus, I never had drivers who I could call to provide equipment to shippers. Rather, the only type of drivers available to me were owner-operators from outside our area who were looking for any type of return freight to pay their way home.*

Our lack of a dependable flow of drivers and our lack of any way of calling drivers made it almost impossible to meet any regular pickup requirements of our customers. I would estimate that of the calls we received requesting pickups, we were able to meet less than half of the pickup appointments. As time went on, I began to advise customers that we would try to meet these time requirements, but could not guarantee anything. I recall that we lost two major accounts because we could not meet appointments. One customer in particular, American Maize Products at Hammond,

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* Occasionally, one or two Rexco agents in the East would try to set up drivers with two trip leases in succession and advise them to call me to obtain the second trip lease. However, such arrangements provided only a small minority of the equipment we needed.

Indiana, was very upset with us because we could not provide the equipment at the time it was requested. Accordingly, it terminated almost all of its business with our agency.

In my duties of accepting loads for movement, I was advised that Rexco could move loads to all points east of Denver. At a later point, Mr. Smith advised me to avoid Arkansas and Minnesota as Rexco was apparently having legal problems in those states. Mr. Smith never mentioned regular routes or express service to me. At one point, he told me that even though Rexco was being investigated, it would take two or three years before the Commission or the Courts could close us down.

As indicated, after March 1, 1976, John Smith was the Rexco Agent for northern Indiana. Mr. Smith also was the Rexco Agent in Minneapolis, Milwaukee, and St. Louis. Initially, Mr. Smith spent a considerable amount of time at our Gary office. However, once the agency was set up he would spend an average of one day every two weeks in the office. Accordingly, I was performing almost all of the duties of an agent for the Gary operation. I was employed by a company called Allways Freight Inc. which Mr. Smith apparently owns. I would call Mr. Smith's office in Minneapolis regularly and report my activities to office personnel there. Mr. Smith also represented himself to me the Midwest Manager of Rexco. However, I am not aware if he was actually a Rexco employee. In short, after Mr. Smith assumed the agency there was no regular agents controlling the Gary operations. I,

in effect, ran the operations but was never given authority as an agent.

In June, 1976, Mr. Smith hired another employee to attempt to solicit trip lease drivers. In early July, Mr. Smith told me that he intended to give this employee the title of Rexco agent. As I felt that this employee was not qualified to be agent, I did not wish to remain with Rexco. Accordingly, I terminated my employment on July 9, 1976. I can state that the manner in which the agency operated basically remained the same from the time Mr. Smith took the agency over until the time I left. No change in operations was effected to alter the service being offered by Rexco.

Mary Ann Campbell

Mary Anne Campbell

Cl s7

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

FURTHER PETITION FOR RECONSIDERATION OF ORDER OF COMMISSIONER MURPHY SERVED JULY 29, 1976, AND FOR RECONSIDERATION OF THE ORDER OF THE COMMISSION SERVED AUGUST 24, 1976, AND REQUEST FOR EXPEDITED ACTION

Respectfully submitted,

WHITMAN & RANSOM
522 Fifth Avenue
New York, N.Y. 10036
and
MARCUS & ANGEL
60 E. 56th Street
New York, N.Y. 10022

Co-Counsel to the Trustee

DONELAN AND CLEARY
914 Washington Building
15th & New York Avenues, N.W.
Washington, D.C. 20005

Special Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

Dated: August 24, 1976

BEFORE THE

INTERSTATE COMMERCE COMMISSION

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS,
INC. FOR CANCELLATION OF TEMPORARY AUTHORITIES

FURTHER PETITION FOR RECONSIDERATION OF
ORDER OF COMMISSIONER MURPHY SERVED JULY 29, 1976, AND
FOR RECONSIDERATION OF THE ORDER OF
THE COMMISSION SERVED AUGUST 24, 1976, AND
REQUEST FOR EXPEDITED ACTION

Comes now REA Express, Inc., C. Orvis Sowerwine, Trustee in Bankruptcy (hereinafter REA or Trustee) and respectfully petitions the Commission to reconsider and set aside the Order of Commissioner Murphy served July 29, 1976, as well the Order of the Commission served today, August 24, 1976, for the following, compelling reasons:

I

On August 19, 1976, the Trustee filed his Petition

For Reconsideration of the involved Order of July 29, 1976, wherein the Trustee requested the Commission to reconsider and set aside said Order and to grant the following relief:

1. To cancel the hearing now assigned to begin August 30, 1976, under the first ordering paragraph, and in lieu thereof to postpone the hearing for not less than 45 days thereafter;

2. To delete the requirement in the fourth ordering paragraph that the Trustee proceed with his case-in-chief immediately following completion of complainants' case-in-chief, and to substitute therefor a provision for adjournment of the hearing for 45 days following completion of complainants' case-in-chief for the Trustee to prepare his evidence in opposition;

3. To delete the second ordering paragraph in its entirety, leaving complainants to discharge their own burden of proof;

4. To retain the requirement that complainants serve their evidence and arguments upon the Trustee on or before August 23, 1976;

5. To delete the fifth ordering paragraph in its entirety.

II

The Trustee's petition of August 19, 1976 is incorporated by reference herein. Said petition demonstrated clearly for the reasons given that the Trustee would be grievously deprived of adequate notice and fair hearing if the Commission failed to grant the requested relief and to postpone the start of the hearing and to make provisions for adjournment following the complainants' case-in-chief. As indicated below, subsequent

events have compounded the Trustee's precarious position and have necessitated the instant petition.

III

On August 23, 1976, at approximately 7:00 p.m. in the evening the Trustee's Washington Counsel was served with the direct evidence and argument of the numerous complainants and the American Trucking Associations, Inc. On that date, late in the afternoon, the Trustee's Washington Counsel also received the evidence of the Commission's Bureau of Enforcement. The evidence of intervenor Home Transportation Company had previously been received on Friday, August 20, 1976.

The evidence of the complainants and the American Trucking Associations, Inc. consists of 36 separate witness statements and attached exhibits, as well as 9 additional items of evidence, including the complainants' traffic study. <u>This mass of material totals 970 pages</u>! The Bureau of Enforcement's evidence consists of an additional 47 pages of testimony and argument, as well as the Bureau's abstract of 68 separate shipments. The evidence of Home Transportation Company consists of an additional 10 pages of testimony and attached exhibits.

In short, the Trustee has been served with over 1,000 pages of testimony and exhibits. In this respect the Trustee points

out that, contrary to the impression left by complainants' Reply of August 20, 1976, all but approximately 80 pages of this mass of material is totally new to the Trustee and was not previously made available to him.

IV

As indicated above, as a practical matter the Trustee's Washington Counsel did not receive this voluminous amount of testimony until this morning, Tuesday, August 24 - only four working days before the hearing in this case is scheduled to begin. The Trustee's New York Counsel will not even receive this material until this afternoon at the earliest.

The Trustee submits that it is wholly unconscionable and unrealistic to expect REA to be prepared and in a position to defend itself by Monday, August 30, 1976. Even if REA were a large, fully-staffed organization with adequate resources - which as this Commission is well aware, it most certainly is not - it would still not be able adequately to analyze and assess this mountain of testimony and exhibits and to be prepared to go forward within four working days. The Commission should not permit the Trustee to be subjected to such unjust, unfair and unlawful treatment.

WHEREFORE, with utmost earnestness and in the interest of due process and fair hearing, the Trustee reiterates its request that the Order of July 29, 1976, as well as the subsequent Order of August 24, 1976, be reconsidered and set aside, and that the Commission grant the relief requested

in said petition.

Dated at Washington, D.C. this 24th day of August, 1976.

Respectfully submitted,

WHITMAN & RANSOM
522 Fifth Avenue
New York, N.Y. 10036
and
MARCUS & ANGEL
60 E. 56th Street
New York, N.Y. 10022

Co-Counsel to the Trustee

Of Counsel:

Donald L. Wallace
John M. Cleary
John K. Maser III

DONELAN AND CLEARY
914 Washington Building
15th & New York Avenues, N.W.
Washington, D.C. 20005

Special Counsel to the Trustee

Dated: August 24, 1976

Certificate Of Service

I hereby certify that on this 24th day of August, 1976 copies of the foregoing Petition have been served upon all parties of record by mailing copies of the same to them via first class mail, postage prepaid, in accordance with the General Rules of Practice of the Interstate Commerce Commission.

JOHN M. CLEARY

CI 58

OH

SERVICE DATE

AUG 24 1976

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 23rd day of August, 1976.

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC., v. REXCO, INC., AND REA EXPRESS, INC.

No. MC-C-8864

SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867

AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874

ASSOCIATED TRUCK LINES, INC., ET AL v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR CANCELLATION OF TEMPORARY AUTHORITY

Upon consideration of the record in the above-entitled proceeding, a petition filed August 19, 1976, by REA Express, Inc., C. Orvis Sowerwine, Trustee in Bankruptcy, seeking reconsideration of the order of Commissioner Rupert L. Murphy entered July 28, 1976, providing for procedural steps in the above-entitled proceeding, and a reply thereto filed August 20, 1976 by complainants; and

It appearing, That the petition fails to set forth sufficient reason for reconsideration or revision of the order entered July 28, 1976;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission (Commissioners Murphy, Hardin and O'Neal did not participate).

(SEAL)

ROBERT L. OSWALD
Secretary

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Before the
INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

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REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

JOINT REPLY OF COMPLAINANTS TO PETITION FOR RECONSIDERATION DATED AUGUST 24, 1976 AND MOTION TO STRIKE UNDER RULE 101 (f)

By: Richard H. Streeter
Edward K. Wheeler
John W. Bryant
Daniel C. Sullivan
Todd A. Peterman
Attorneys for Complainants

OF COUNSEL:

WHEELER & WHEELER
704 Southern Building
15th & H Streets, N.W.
Washington, D. C. 20005

EAMES, PETRILLO AND WILCOX
900 Guardian Building
Detroit, Michigan 48226

SINGER & SULLIVAN
327 South La Salle Street
Chicago, Illinois 60605

AMERICAN TRUCKING ASSOCIATIONS, INC.
1616 P Street, N.W.
Washington, D. C. 20036

August 25, 1976

Before the
INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423

No. MC-C-8862
BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. and
REA EXPRESS, INC.

No. MC-C-8864
SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867
AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874
ASSOCIATED TRUCK LINES, INC. ET AL. v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)
REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC. FOR CANCELLATION OF TEMPORARY AUTHORITY

JOINT REPLY OF COMPLAINANTS TO PETITION FOR RECONSIDERATION DATED AUGUST 24, 1976 AND MOTION TO STRIKE UNDER RULE 101 (f)

COME NOW Complainants and jointly ask the Commission to deny summarily the "Further Petition for Reconsider of Order of Commissioner Murphy Served July 29, 1976, and for Reconsideration of the Order of the Commission Served August 24, 1976, and Request for Expedited Action." In the alternative Complianants ask the Commission to strike Respondents' petition on the ground that it is in violation of the Commission's Rules of Practice prohibiting successive petitions.

In answering Respondents' petition, Complainants respectfully call attention to the fact that the Commission, in setting this matter for oral hearing, did not have to require Complainants to present their argument and evidence prior to the commencement of the hearing. By imposing this requirement, which Complainants have satisfied, the Commission has given Respondents an advantage that is not usually enjoyed in proceedings of a similar nature.

Second, REA should have been ready to defend itself from the very first moment it began to conduct operations beyond the scope of its authorities. REA knew, or should have known, that the Rexco operations were at the very least questionable and, in all probability, downright illegal. Because REA persisted in the wanton and willful conduct of these operations, it put itself in the position of having to account for its actions at any time. In the instant proceeding REA has been on notice for at least nine months that its day of reckoning is coming. Furthermore, had it chosen to review its authorities and the many Commission decisions interpreting those authorities, it would have been able to anticipate fully the arguments that Complainants have raised. In short, it would appear this petition is yet another step in a calculated effort to prolong the illegal Rexco operations and thereby fulfill the prophecies noted in the Verified Statement of Mary Anne Campbell, which is attached as Appendix 20 to Complainants' filing, that "even though Rexco was being investigated, it would take two or

years before the Commission or the Court could close us down."

As a review of the Complainants' filing will reveal, the heart of their case is contained in a relatively short argument. The balance of the filing, which admittedly is rather bulky, consists in large part of copies of the operating rights held by Complainants which, while material, are not of crucial significance to this proceeding since Rexco is admittedly conducting nationwide operations.

Finally, it should be noted that this latest petition is nothing more than a rehash of the arguments previously rejected by the Commission's order served August 24, 1976. As such, it is contrary to Rule 101(f) of the Commission's Rules of Practice and, therefore, should not be entertained by the Commission.

Respectfully submitted,

Richard H. Streeter
Edward K. Wheeler
John W. Bryant
Daniel C. Sullivan
Todd A. Peterman
Attorneys for Complainants

August 25, 1976

CI 78

SERVICE DATE

AUG 27 1976

OH

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 26th day of August, 1976.

No. MC-C-8862

BRADA MILLER FREIGHT SYSTEM, INC. v. REXCO, INC. AND REA EXPRESS, INC.

No. MC-C-8864

SCHNEIDER TRANSPORT, INC. v. REA EXPRESS, INC.

No. MC-C-8867

AMERICAN TRUCKING ASSOCIATIONS, INC. v. REA EXPRESS, INC.

No. MC-C-8874

ASSOCIATED TRUCK LINES, INC., ET AL v. REA EXPRESS, INC.

No. MC-66562 (Sub-No. 2345) (Part No. 181)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR DISMISSAL OF APPLICATION

No. MC-66562 (Sub-No. 2308 TA)

REA EXPRESS, INC. - PETITION OF AMERICAN TRUCKING ASSOCIATIONS, INC., FOR CANCELLATION OF TEMPORARY AUTHORITY

Upon consideration of the records in the above-entitled proceedings, a tendered petition filed August 24, 1976, by REA Express, Inc., C. Orvis Sowerwine, Trustee in Bankruptcy, seeking reconsideration of the order of the Commission entered August 24, 1976, which order denied a petition for reconsideration of an order providing for procedural steps in the above-entitled proceeding, and a reply thereto filed August 25, 1976 by complainants; and

It appearing, That the petition constitutes a successive petition on the same grounds as that previously denied by the entire Commission which is not acceptable under the provisions of Rule 101(f) of the Commission's General Rules of Practice, 49 CFR 1000.101(f);

It is ordered, That the petition be, and it is hereby, rejected;

And it is further ordered, That oral hearing in these proceedings will proceed as scheduled at the Offices of the Interstate Commerce Commission, Washington, D. C. beginning on August 30, 1976 (length of hearing indefinite), at 9:30 a.m. local time;

By the Commission (Commissioners Murphy, Hardin and O'Neal did not participate).

(SEAL)

H. G. HOMME, JR.
Acting Secretary

C.I. 87

OG

DO NOT SERVE

FILE IN DOCKET

ORDER

INTERSTATE COMMERCE COMMISSION

MC-C 8862

BRADA MILLER FREIGHT SYSTEM, INC.
v.
REXCO, INC., ET AL

PRESENT: Robert C. Gresham Commissioner, to whom the matter which is the subject of this order has been assigned for action thereon.

It is ordered, That the above-entitled proceeding be, and it is hereby, referred to Administrative Law Judge Richard H. ddow, Jr., effective August 30, 1976.

Dated at Washington, D. C., this 30th day of August, 1976.

By the Commission, Commissioner Gresham.

H. G. Homme Jr.

H.G. HOMME, JR.,
Acting Secretary

(SEAL)

OH-4
(10/75)

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